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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210, 215 and 220

[FNS–2007–0003]

RIN 0584–AD38

Procurement Requirements for the National School Lunch, School Breakfast and Special Milk Programs

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: The Food and Nutrition Service (FNS) is revising the regulations governing procedures related to the procurement of goods and services in the National School Lunch Program, School Breakfast Program and Special Milk Program to remedy deficiencies identified in audits and program reviews. This final rule makes changes in a school food authority's responsibilities for proper procurement procedures and contracts, limits a school food authority's use of nonprofit school food service account funds to costs resulting from proper procurements and contracts, and clarifies a State agency's responsibility to review and approve school food authority procurement procedures and contracts. This final rule also amends the Special Milk Program and School Breakfast Program regulations to make the procurement and contract requirements consistent with the National School Lunch Program regulations. These changes are intended to promote full and open competition in school food authority procurements, clarify State agency responsibilities, and ensure that only allowable contract costs are paid with nonprofit school food service account funds.

DATES: This rule is effective November 30, 2007. However, implementation will be phased in for existing contracts. Implementation timeframes are discussed more fully in section III of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Melissa Rothstein, Branch Chief, or Lynn Rodgers-Kuperman, Program Analyst, Child Nutrition Division, Program Analysis and Monitoring Branch, Food and Nutrition Service, Department of Agriculture, 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302–1500. FAX (703) 305–2879; telephone (703) 305–2590.

SUPPLEMENTARY INFORMATION:

I. Background

On December 30, 2004, FNS published a Notice of Proposed Rulemaking (proposed rule) in the **Federal Register** (69 FR 78340) intended to remedy the deficiencies in school food authority procurement practices that are undermining full and open competition and resulting in unallowable uses of nonprofit school food service account funds. The December 2004 rule proposed to:

(1) Clarify allowable nonprofit school food service account expenditures for costs resulting from cost reimbursable contracts or cost reimbursable contract provisions;

(2) prohibit contract terms that allow payments from the nonprofit school food service account in excess of the contractor's actual net allowable costs, computed by deducting certain rebates, discounts and other credits; and

(3) require State agency review and approval of all contracts between school food authorities and food service management companies prior to their execution.

As discussed in the preamble to the proposed rule, most school food authorities manage the National School Lunch Program, School Breakfast Program and Special Milk Program on their own. However, some school food authorities choose to contract with a commercial enterprise to manage the programs. These commercial enterprises are collectively known as food service management companies.

In regulations published on January 18, 1969, FNS first permitted school food authorities operating under contract with a food service management company to participate in the National School Lunch Program under a pilot program (34 FR 807). On March 1, 1969, FNS issued prototype agreements for use by these school districts (34 FR 3704–3709). At that time, the only form of payment to a food service management company was a fixed price per plate or other meal equivalency served or delivered that included the contractor's full costs and profit. The food service management company was required to purchase food for the school food authority with invoices sent directly to the school food authority for payment. The cost of such food purchases was limited to the amount agreed upon between the food service management company and the school food authority (34 FR 3704). In effect, this contract was a cost reimbursable contract with a cap on costs plus a fixed management fee. Over time, the limit on costs was abandoned. Currently, food service management company contracts are either an inclusive fixed price per meal, or cost reimbursable with a fixed fee (without a cap on costs) contracts. We understand that the majority of all food service management company contracts are cost reimbursable with a fixed fee.

School food authorities use funds from the nonprofit school food service account to pay for costs incurred under both self-managed and food service management company-contracted programs. The funds in the nonprofit school food service account come from federal and nonfederal sources. The federal funds are provided as reimbursements from the U.S. Department of Agriculture (Department) for meals and milk meeting the requirements in 7 CFR 210.10, 215.7 and 220.8 that are served to eligible children. The primary sources of nonfederal revenue are student payments, adult payments and a la carte sales revenue. Additional funding sources include State and local funds and sales revenue from vending and catering activities. Regardless of the source, the school food authority must retain all of these revenues in the restricted nonprofit school food service account and may only expend these revenues for the allowable costs of the school food authority's nonprofit school food service program.

When procuring goods or services, including the use of a food service management company, school food authorities must conduct procurements in a manner that provides full and open

competition. Full and open competition is necessary to provide a ''level playing field'' so that all potential contractors have the opportunity to win the contract award. Competition is impaired when potential contractors lack the necessary information to properly identify allowable and unallowable costs and establish the best and most responsive price, or when the procurement is written in a way that inhibits the ability of potential contractors to submit bids. A properly conducted procurement results in the school food authority obtaining the best product at the best price.

Cost allowability is determined using the applicable program and Departmental regulations (7 CFR parts 210, 215, 220, 3016 and 3019, as applicable) and Office of Management and Budget (OMB) Cost Circulars (A–87 Cost Principles for State, Local Governments and Indian Tribal Governments, or A–122 Cost Principles for Non-profit Organizations, as applicable). The determination regarding allowability is made, in part, based on the character of the recipient (i.e., school food authority) incurring the costs under the Federal program. As school food authorities are generally local governmental entities, all costs would, therefore, be subject to the principles found under OMB Circular A–87. In cases where the school food authority is a private non-profit (e.g., in the case of a parochial school), OMB Circular A–122 would apply. Further discussion of this matter is found later in this preamble (see *Applicability of the OMB Cost Circulars to school food authority contracts* under Section II of this preamble).

The proposed rule clarified that only costs resulting from cost reimbursable contracts or cost reimbursable contracts or cost reimbursable contract provisions that meet applicable cost allowability requirements are allowable nonprofit school food service account expenditures. The proposed rule required that allowable contractor costs paid from the nonprofit school food service account be net of all discounts, rebates and applicable credits. In addition, the proposed rule required contractors to provide sufficient information to permit the school food authority to identify allowable and unallowable costs and the amount of all such discounts, rebates and credits on invoices and bills presented for payment to the school food authority. This requirement serves to make the identification of discounts, rebates and credits more transparent to school food authorities and allows for proper use of nonprofit school food service account funds. This requirement should not place an additional burden on contractors as they already track the costs that are billed to school food authorities and have accounting and billing systems in place for school food authority contracts. Under Generally Accepted Accounting Principles and good business practices, these contractors also must maintain systems to track and report discounts, rebates and credits.

OIG Audit Reports

The proposed rule was prompted in part by two audits released by the Office of Inspector General (OIG) in 2002, both of which identified deficiencies in school food authority procurement practices that are undermining full and open competition and resulting in unallowable uses of nonprofit school food service account funds. The first audit, released in February 2002 as Audit Report 27010–3–AT, identified a number of instances where a cooperative buying group, using nonprofit school food service account funds, failed to conduct procurement transactions in a manner that provided for full and open competition. For example, one cooperative buying group failed to include all items to be purchased in its bid solicitation and instead purchased items directly from the contractor outside of the terms of the contract. To purchase directly from the contractor without the benefit of a proper procurement limits full and open competition, as other potential contractors are eliminated from consideration.

The second audit (OIG Audit Report 207601–0027–CH, released in April 2002) revealed problems in several cost reimbursable contracts between school food authorities and food service management companies. OIG found contracts between school food authorities and food service management companies that lacked controls as to exactly how the company would determine the allowability of costs charged to the school food authority, including how the company would provide the school food authority with the benefits of purchase discounts, rebates, and credits in the determination of net costs. The failure of a school food authority to describe its cost reporting requirements fully in its solicitation document undermines full and open competition by placing unreasonable burdens on potential contractors. Without adequate details on how it must report costs to the school food authority, a potential contractor lacks the information needed to properly establish the fixed price component (management fee) of its offer. In addition, school food authorities cannot determine whether nonprofit school food service account funds may be used to pay all or only part of the costs billed by the contractor. In other cases, OIG found that even though the school food authority's procurement documents required the return of such discounts, rebates, and applicable credits, the food service management company was permitted to keep the discounts and rebates earned through purchases billed to the school food authority. Allowing the food service management company to keep these funds was a material change to the contract; material changes require a rebidding of the contract. The net effect is that excess charges are made against the food service account, thereby diminishing food service resources.

Comments in General

FNS received 16 comments on the proposed rule within the allotted 60-day comment period. Of the 16 commenters, seven were State agencies, three were food service management companies, and the rest were trade and professional organizations and consultants.

The proposed rulemaking allowed interested parties the opportunity to request further information from FNS. Three interested parties (food service management companies and their representatives) requested and received the opportunity to meet with FNS in lieu of requesting the information via other means. These meetings were for informational purposes only. None of the discussions at those meetings constituted comments on the proposed rulemaking.

Fourteen of the sixteen commenters supported either one or both of the proposed rule's goals of improving full and open competition in school food service procurements and limiting nonprofit school food service account expenditures to net allowable costs. All but two commenters raised concerns or objections to one or more of the proposed rule's provisions or requested additional guidance. One commenter only addressed long term beverage contracts and one commenter disagreed that the identification of credits and rebates in cost reimbursable procurement solicitations and contracts would foster greater competition in school food service procurements. No specific comments were received on the proposal to make the procurement and contract requirements and the consequences for failing to take corrective action in the Special Milk Program and School Breakfast Program

regulations consistent with the National School Lunch Program regulations.

II. Discussion of the Rule's Provisions and Related Comments

Definitions

The proposed rule added definitions of ''Applicable credits,'' ''Contractor,'' and ''Nonprofit school food service account'' to 7 CFR 210.2, 215.2 and 220.2. All subsequent references to regulatory sections are to title 7, Code of Federal Regulations, unless otherwise indicated.

''Applicable credits'' was defined with a cross-reference to definitions provided in OMB Circulars A–87 and A–122. The proposed rule at §§ 210.21(e)(1)(i), 215.14a(d)(1)(i) and 220.16(e)(1)(i) required that cost reimbursable contracts include a provision that costs paid to the school food authority's contractor be net of all discounts, rebates and other applicable credits received by the contractor. Examples of applicable credits are discount incentives for volume purchases, credits for returned goods, and rebates paid for the purchase of specific goods.

Several commenters asked for clarification on whether earned income would be considered an ''applicable credit'' under the proposed definition. In general, earned income is a payment from the manufacturer to the distributor for work performed by the distributor on behalf of the manufacturer. Some examples of earned income include payments made to a distributor for promoting new products, hosting trade shows, distributing promotional information, or carrying a particular product in inventory. In each of these cases, the distributor must perform some service to receive the payment from the manufacturer. This type of earned income is not related to purchases made by a school food authority using its nonprofit school food service account and, therefore, is not considered an applicable credit.

Three commenters asked for clarification on whether a prompt payment discount would be considered an applicable credit. A prompt payment discount is an applicable credit to the nonprofit school food service account only if the school food authority earns the reduction by paying the bill or by providing advance funds to another party to pay the bill on its behalf. We understand that in the majority of school food authority cost reimbursable contracts, distributors and food service management companies obtain goods from suppliers, are billed by those suppliers, pay the suppliers and then deliver the goods at some later point in time to the school food authority. In these arrangements, the prompt payment discounts are not applicable credits to the school food authority.

On the proposed definition of ''contractor,'' a number of commenters asked for confirmation that the definition includes all contractors to the school food authority, not just food service management companies. The commenters are correct.

Commenters also wanted clarification on whether a purchasing cooperative meets the definition of a contractor. A school food service purchasing cooperative, an organization formed by school food authorities to conduct purchases, is not a contractor to its school food authority members, but instead acts as their purchasing agent. As an agent, the purchasing cooperative must follow the same rules in acquiring goods and services that its school food service members would follow should the members make the acquisitions themselves.

Another type of purchasing cooperative is a cooperative buying group, which is an already existing public, for-profit or nonprofit buying group which usually requires the payment of a fee to become a member. In exchange for the membership fee, the cooperative buying group offers its members pre-selected items at prices that are generally lower than the price paid at retail establishments for the same items. While the purchase of a membership from the cooperative buying group might create a contractual relationship between the cooperative buying group and the school food authority, a cooperative buying group is not considered a ''contractor'' under the program regulations.

One comment was received on the proposed rule's definition of ''Nonprofit school food service account.'' The proposed rule established the definition of ''Nonprofit school food service account'' to mean the restricted account in which all of the revenue from the food service operations conducted by the school food authority principally for the benefit of school children is retained and used only for the operation or improvement of the nonprofit school food service. The commenter requested the word ''restricted'' be further defined. No change to this definition is being made in this final rule because the nature of the restrictions on the use of nonprofit school food service account funds are explained within the definition itself and at § 210.14(a).

In addition to the requests for clarification discussed above, commenters also requested that definitions be added to the final rulemaking for ''cost contract,'' ''fixed price contract,'' ''cost reimbursable contract'' and ''fixed fee.'' The terms ''cost reimbursable contract'' and ''fixed fee'' have been defined in this final rule, because FNS will need to use these terms in regulatory language. However, we did not define the other two terms. The term ''cost contract'' is already defined in Department regulation 7 CFR 3016.3. FNS does not see the need to use the term ''fixed price contract'' in the National School Lunch, Special Milk or School Breakfast Program regulations, and has therefore elected not to define that term in regulatory language. (Please note, however, that while the term ''fixed price contract'' is not used in the regulations, it is a commonly used type of contract in these programs, and will be used at various times in this preamble.) Thus, the final rule adds definitions for ''cost reimbursable contract'' and ''fixed fee'' based on existing regulations, accounting definitions and previously issued policy and guidance.

Accordingly, the three definitions proposed for ''applicable credit,'' ''contractor,'' and ''nonprofit school food service account'' are adopted without changes, and definitions for ''cost reimbursable contract'' and ''fixed fee'' are added to this final rulemaking for the National School Lunch, Special Milk and School Breakfast Programs at §§ 210.2, 215.2 and 220.2, respectively.

Procurement Procedures

As a general rule, all procurements in the School Nutrition Programs, whether for goods or services, must be competitive. Sections 210.21(c), 215.14a(c), and 220.16(c) of the proposed rule included the requirement that, in conducting procurements, State agencies and school food authorities may use their own procurement procedures which reflect applicable state and local laws and regulations, as long as procurements made with nonprofit school food service account funds meet the standards set forth in the program regulations and §§ 3016.36(b) through 3016.36(i), § 3016.60 and §§ 3019.40 through 3019.48, as applicable, and in the applicable OMB Cost Circulars. We have modified the language of §§ 210.21(c), 215.14a(c) and 220.16(c) to more accurately reflect the provisions of §§ 3016.36(a) and 3016.60(a), which specify that State grantees may elect to follow either the State laws, policies and procedures, or the procurement standards for other governmental grantees and subgrantees in accordance with § 3016.60(b) through (i). Regardless of the option selected,

States must ensure that all contracts include any clauses required by Federal statutes and executive orders and that the requirements of § 3016.60(b) and (c) are followed.

Two commenters raised issues with procurement procedures in general. The first asked that we consider permitting cost plus percentage of cost contracts. The commenter's rationale for allowing this procurement method was that this form of contract costing may be the most cost effective procedure for school food authority bidding. In a cost plus percentage of cost contract, the contractor earns its fee based on a percentage of the cost of goods it sells under the contract. This contract cost method is prohibited government-wide because this form of contract pricing provides a financial incentive for the contractor to increase costs.

The second commenter expressed concern that our position that competition is required for all procurements would prevent school food authorities from taking advantage of ''value added'' products or consider factors other than price in awarding a contract. Although the proposed rule did not directly address this issue, this comment reflects a misunderstanding of procurement practices which we will address briefly in this preamble and in future guidance and training.

While a potential contractor may indeed have a better (''value added'') product, if that product does not meet solicitation specifications, the school food authority cannot use the phrase ''value added'' to circumvent proper procurement procedures. It is not appropriate for a school food authority to select products that do not meet solicitation requirements. If the school food authority determines that the value added product is more appropriate than the product it specified in its procurement solicitation, the school food authority must issue a new solicitation or wait until its next bid cycle to change its specifications. This does not mean, however, that a school food authority must consider a product that does not meet the specifications even if that product has the lowest cost.

Another concern raised by this commenter and others was that school food authorities could be penalized if they failed to use either sealed bidding or competitive proposals to purchase every item needed during the school year. This is not the case, but does represent a common misunderstanding that the term ''competitive procurement'' means that either the sealed bid or competitive proposal method must be used. Some form of competition is required for every purchase, but not every purchase is subject to the formal (sealed bid or competitive proposal) solicitation methods. There are many items that are purchased in such small quantities that it is not cost effective for the school food authority to conduct a formal procurement to acquire these items. However, just because a purchase will not meet the formal procurement threshold does not mean the school food authority is exempt from competitively procuring the purchase. In these situations, the school food authority would use simplified small purchase procedures. Simplified small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or property that may be used when the anticipated acquisition will fall below the Federal simplified acquisition threshold currently set at $100,000. Informal or small purchase procedures, discussed at § 3016.36(d), are relatively simple and informal practices that are not as rigorous as formal procurement procedures, but that still provide competition. For example, a school food authority seeking to purchase several thousand dollars worth of office supplies would not have to issue a formal solicitation document and publicize it widely. Rather, the school food authority could simply fax its list of needed supplies to at least three local suppliers, and then compare the prices received from each. School food authorities must determine and apply any State or local thresholds that are lower, and therefore more restrictive, than the current Federal small procurement threshold of $100,000.

Provisions Required in Cost Reimbursable Contracts

The proposed rule required, in §§ 210.21(e)(1), 215.14a(d)(1), and 220.16(e)(1), that school food authorities include specific solicitation and contract provisions in cost reimbursable contracts or contracts with cost reimbursable terms. These proposed provisions included the requirement that allowable costs be paid to the contractor net of all discounts, rebates, and applicable credits; and that the contractor individually identify on bills and invoices, and maintain documentation of, discounts, rebates, and applicable credits. In addition, the proposed provisions included the requirement that the contractor separately identify for each cost submitted for payment to the school food authority the amount of the cost that is allowable (i.e., can be paid from the nonprofit school food service account) and the amount that is unallowable, as determined in accordance with the applicable regulations and OMB cost circulars.

These proposals, taken together, are intended to provide school food authorities with the information they need to identify the net allowable portion of their contract costs that can be funded from the nonprofit school food service account, and the amount of unallowable contract costs that must be funded from other sources. These proposals are also intended to inform contractors about these reporting requirements up front.

Applicability of Contract Provisions to Different Contract Types

A number of comments were received regarding the applicability of these solicitation and contract terms to fixed price contracts or to the fixed fee components of cost reimbursable contracts. A fixed price contract is a contract cost method that establishes a fixed price, usually on a per unit basis, for the goods and/or services provided by the contractor for the duration of the contract, including renewals. A fixed fee is often one component of a cost reimbursable contract.

We did not propose, nor does this final rule require that these same solicitation and contract provisions relating to discounts, rebates, and applicable credits be included in fixed price solicitations or in the resulting fixed price contracts, because contractors have already taken discounts, rebates and other credits into consideration when formulating their prices for fixed price contracts. The same holds true for the fixed fee component of a cost reimbursable contract. However, the cost reimbursable components of any contract would be subject to the requirement that specific provisions relative to discounts, rebates and applicable credits be included.

One commenter asked whether fixed fee contracts or the fixed fee components of cost reimbursable contracts that were adjusted over time would be subject to the proposed rulemaking. As long as these changes result from contractually agreed-upon adjustment factors, such as changes in the reimbursement rates for the School Meal Programs or changes in other third-party cost or price indices, the adjustments would not be subject to the contract terms set forth in this rulemaking.

Several commenters suggested that FNS mandate the use of fixed price contracts. Based on anecdotal information, some State procurement statutes and regulations already limit

public school food authorities to fixed price contracting, while other State agencies have mandated this form of contracting for specific acquisitions, such as acquiring the services of a food service management company. However, mandating the use of fixed price contracts on a national basis is not in the best interest of the school nutrition programs. State agencies and school food authorities, not FNS, should determine whether acquisitions are best suited to fixed price or cost reimbursable contracts.

Commenters also expressed concern that by not subjecting fixed price contracts to the provisions of the proposed rule, school food authorities would not be required to determine the allowability of costs resulting from fixed price contracts. As stated above, fixed price contracts are not subject to the provision of the proposed rule requiring that allowable contractor costs paid from the nonprofit school food service account be net of all discounts, rebates, and applicable credits because contractors have already taken into consideration factors such as discounts, rebates and other credits when formulating their prices for fixed price contracts. However, the net cost factor is only one aspect used in determining allowable costs. Expenditures from the nonprofit school food service account for fixed price contracts must still meet the general requirements for allowable costs. To be allowable, a cost must be necessary, reasonable, and allocable.

For example, a school seeks to contract for janitorial supplies for the entire school building through a single procurement solicitation. The contract will be awarded on a fixed price per item basis. Under the allowable cost rules, the costs associated with the janitorial supplies purchased for use by the school food service would be an allowable expenditure from the nonprofit school food service account, but costs associated with the janitorial supplies purchased for the rest of the school would not, as they are not allocable to the nonprofit school food service account. The fact that the contract was fixed price would not supersede the cost requirement that to be allowable, a cost must be necessary, reasonable and allocable to the nonprofit school food service. The same principles would apply to the fixed price fee of a cost reimbursable with fixed fee contract.

One commenter raised the issue of the risks contractors, particularly food service management companies, incur when including guaranteed return provisions in contracts, and requested that contracts containing such provisions be considered fixed price for purposes of the final rulemaking. The commenter asserted that providing a guaranteed return causes its company to take profit and loss risks similar to what it assumes in fixed price contracts. The commenter further offered that since a company assumes financial risk by agreeing to the guaranteed return provision, it would be inequitable to treat the contract as cost reimbursable. Instead, the commenter indicated the contract should be viewed as fixed price, thus eliminating the need for the company to include discounts, rebates, and other applicable credits on bills and invoices submitted to the school food authority.

We disagree. Guaranteed return provisions do not substantially alter the terms of a contract enough to convert it from cost reimbursable to fixed price. Furthermore, guaranteed return provisions are neither new nor unique to the School Meal Programs, nor are these provisions limited to cost reimbursable contracts. By entering into contracts with guaranteed return provisions, the contractor willingly agrees to accept the risk. In their current form, most of these guaranteed return provisions do not place successfully performing contractors at risk. As the commenter noted, guaranteed return provisions provide a financial assurance that certain contractual promises made to the school food authority will be met. There is no Federal requirement that a contract be drafted to eliminate all possible risk to a contractor, nor is a school food authority required to indemnify its contractor against all potential risks that might occur, particularly those that the contractor has agreed to accept.

No changes are being made in this final rule based on these comments.

Payment of net allowable costs from the nonprofit school food service account

Most commenters supported the proposed rule's provisions limiting expenditures from the nonprofit school food service account to net allowable costs. However, there did appear to be some misunderstanding of this proposal. Some commenters asserted that we were proposing that discounts, rebates, and other applicable credits must be returned to the school food authority. Another commenter asserted that the proposal that contractors identify allowable and unallowable costs on invoices would substantially alter the current economic structuring of transactions between food service management companies and school food authorities.

To clarify, this provision does not prevent a school food authority from entering into a contract that results in unallowable costs. It does, however, prohibit the school food authority from using nonprofit school food service account funds to pay any amount above net allowable costs. The decision regarding whether discounts, rebates, and other applicable credits are returned to the school food authority is a decision between the school food authority and its contractor. However, the school food authority can only use nonprofit school food service account funds to pay for costs that are net of discounts, rebates, and applicable credits.

To prevent any future misunderstanding of this distinction, we have amended this final rule at §§ 210.21(f)(1)(i), 215.14a(d)(1)(i) and 220.16(e)(1)(i) to clarify that the limitations on the payment of allowable and unallowable costs pertain only to expenditures from the nonprofit school food service account.

Confidentiality and Disclosure of Discounts, Rebates, and Credits

One commenter requested confirmation that contractors would be required to disclose discounts, rebates, and other applicable credits whether the amounts were received by the contractor itself, a subsidiary or an affiliate of the contractor. The commenter is correct. The commenter also requested confirmation that the disclosure of such amounts would apply whether the contractor's headquarters is in the United States or otherwise or when these amounts are received by entities under the control of the same parent corporation as the contractor. Again, the commenter is correct. The intent is to promote full and open competition and limit expenditures of the nonprofit school food service account to allowable costs. That would not be achieved if contractors could use their corporate structures to circumvent the disclosure requirements of this rulemaking.

Three commenters raised concerns with the protection of confidential business arrangements when reporting discounts, rebates and other applicable credits. FNS is sensitive to the commenters' concerns related to confidential business relationships. We agree with the commenters that the reporting of discounts, rebates and other applicable credits should not compromise business relationships that have been promised confidentiality. We were aware that such confidential business relationships could exist and we considered these relationships in developing the proposed regulation. For

this reason, we proposed that the contractor individually identify discounts, rebates or applicable credits on the bills and invoices, but did not propose that the contractor identify the source of the discount, rebate or other applicable credit on the invoice.

There are a number of ways for a contractor to provide sufficient information on its billing documents about the nature of the amounts reported without compromising its confidential business relationships. The contractor could provide the school food authority with a list of products upon which a discount, rebate, or other applicable credit could be earned during the term of the contract and then report the amount of discounts, rebates and other applicable credits in aggregate on billing documents to the school food authority; the contractor could identify the discount, rebate, or other applicable credit by earning period, e.g. for products purchased during the month of April the contractor could identify the discount, rebate, or applicable credit by invoice number. Since not all contractors will use the same method to record and report discounts, rebates, and other applicable credits within their corporate recordkeeping systems, FNS does not want to prescribe the specific method that should be used to identify these amounts on school food authority billing documents.

Although this final rule does not require the reporting of confidential business information on bills and invoices, it does require that the contractor maintain records and source documents in support of the costs and discounts, rebates and other applicable credits included on bills and invoices to the school food authority and make them available to the school food authority, State agency and Department upon request. This record retention requirement is no different from the existing requirements found in Department regulations at §§ 3016.36(i)(10) and 3019.48(d). Contractors have always been required to maintain source documents in support of the costs charged to school food authorities. The intent of the provisions at §§ 210.21(f)(1)(iv), 215.14a(d)(1)(iv) and 220.16(e)(1)(iv) and the record retention requirements in the Department's regulations is to provide sufficient information to permit a school food authority to determine the costs billed by its contractors that can be paid from the nonprofit school food service account, and to permit a subsequent review of the contractor's source documents to verify that the costs, discounts, rebates, and other applicable credits were properly reported under the terms of the contract.

To eliminate the possibility that readers could misinterpret this requirement, this final rule amends §§ 210.21(f)(1)(iv), 215.14a(d)(1)(iv) and 220.16(e)(1)(iv) to clarify that contractors are only required to identify the amount of each discount, rebate or applicable credit on the bill or invoice and whether the amount is a discount, rebate, or in the case of some other form of applicable credit, the nature of that credit.

Timing

Several commenters expressed concerns with the timing of the reporting required of contractors to identify discounts, rebates and other applicable credits on all bills and invoices sent to the school food authority. Presumably, this would occur on a monthly basis. In commenting on the timing, one commenter suggested requiring potential contractors to include this information up front, by bidding prices as if the discount, rebate or other applicable credit had already been earned, with a subsequent reconciliation at the end of the contract.

We considered the option of requiring prices to be bid less discounts, rebates and other applicable credits. However, we do not believe this will improve full and open competition nor will such a requirement maintain the integrity of the nonprofit school food service account given the current state of school food authority procurements, as this information may not always be available to the contractor at the time of bidding.

However, since FNS is encouraging State agencies to take a more active role in school food authority procurements, this final rule amends §§ 210.21(f)(1)(iv), 215.14a(d)(1)(iv) and 220.16(e)(1)(iv) to permit State agencies to approve reporting on other than a monthly basis, but not less frequently than annually. A State agency may choose to establish reporting timeframes on an individual contract basis or on a Statewide basis.

Other commenters on the issue of timing addressed the reporting of discounts, rebates and other applicable credits that result from contract activity, but are not earned or received by the contractor until after the contract has ended. While some discounts, rebates, and other applicable credits will be known to the contractor when bills are issued to the school food authority, others, particularly volume discounts, may not be known until some point in the future. For example, a volume purchase discount is earned when sales of a particular item reach an established target. The contractor may not reach the target sales volume until after the school food authority's contract has ended, even though the purchases by the school contributed to reaching the target volume. This could occur when the timing of the school food authority's contract does not coincide with the timing of the volume discount earning period, or even when the timing of the contract and the volume discount earning period is the same but the contractor does not receive the benefit of a volume discount, rebate or other applicable credit until after the school food authority's contract has concluded. The method for providing the discount, rebate, or other applicable credit amount in this situation depends on whether the contractor and the school food authority maintain an on-going, uninterrupted, contractual relationship, *i.e.*, a subsequent or renewal contract is in place. When the contractor and the school food authority's contractual relationship is uninterrupted, the contractor can include the discount, rebate, or other applicable credit in the next reporting period after it is received. For those situations in which the contractor and the school food authority do not maintain an uninterrupted contractual relationship, the amount of the discount, rebate or applicable credit must be provided to the school food authority once these amounts are known to the contractor. Depending upon the school food authority's financial management practices, the school food authority may need the contractor to identify the period in which the discount, rebate, or other applicable credit was earned so that it can adjust its accounting records accordingly. In such cases, the contractor would need to provide sufficient information for the school food authority to identify the appropriate accounting period requiring adjustment.

We agree that the proposed regulatory provisions should be clarified to address this issue. Therefore, we are amending §§ 210.21(f), 215.14a(d) and 220.16(e)(1) to require school food authorities to include specific directions in solicitations and contracts for reporting discounts, rebates, and applicable credits after the close of the contract to which the cost reductions apply.

Identification of Allowable and Unallowable Costs on Invoices

The provision of the proposed rule requiring contractors to identify allowable and unallowable costs on invoices was added to provide school food authorities with the information they need to determine what may be paid out of the nonprofit school food

service account. We considered four alternatives when developing this provision of the proposed rule, including: (1) Maintaining the status quo of not requiring specific documentation; (2) requiring that contractors provide source documentation to school food authorities for all costs charged; (3) requiring that contractors have an annual audit for each cost contract with a school food authority to determine allowable and unallowable costs; or (4) requiring that contractors include only allowable costs on invoices.

Maintaining the status quo was rejected because OIG audits and investigations indicated that nonprofit school food service account funds have been expended for unallowable costs because the school food authority had insufficient information to identify unallowable costs included on invoices. The requirement that contractors provide source documentation for all costs charged was rejected because it would be excessively burdensome on contractors to provide this information. Similarly, an annual audit requirement was rejected because it would be both burdensome and cost prohibitive for contractors to incur annual audit costs for each of its cost reimbursable contracts with school food authorities. Finally, the fourth alternative of requiring that contractors include only allowable costs on invoices was rejected in developing the proposed rule because it would interfere with the school food authority's right to enter into contracts that contained costs that were unallowable nonprofit school food service account expenditures, but nevertheless represented costs the school food authority was willing to fund from other sources.

However, FNS has now reconsidered this fourth alternative (requiring that contractors include only allowable costs on invoices) because a school food authority can elect to contract only for allowable costs. If, in our previous example, the janitorial supplies contract was cost reimbursable instead of fixed price, pursuant to the provisions of this final rule, the contractor would appropriately identify all of the janitorial supplies sold to the school food authority as allowable costs on its monthly invoice. The contractor's identification of allowable and unallowable costs on the invoice does not mean that the school food authority can fund the entire cost of its janitorial supplies contract from its nonprofit school food service account. Because the school food authority, not the contractor, is ultimately responsible for ensuring that expenditures from the nonprofit school food service account are allowable costs as determined in accordance with the applicable OMB cost circular, the school food authority would still be required to fund only its share of the allowable and allocable janitorial supply costs from its nonprofit school food service account.

As a result of this reconsideration, this final rule amends §§ 210.21(f)(1)(ii), 215.14a(d)(1)(ii) and 220.16(e)(1)(ii) to allow school food authorities to choose between two cost reporting provisions for solicitation documents and contracts. The first cost reporting provision finalizes the provision contained in the proposed rulemaking that contractors identify allowable and unallowable costs on billing documents. The second cost reporting provision requires contractors to exclude unallowable costs from billing documents and to certify that only allowable costs are submitted for payment and that records have been established that maintain the visibility of unallowable costs, including directly associated costs, in a manner suitable for contract cost determination and verification. Regardless of the cost provision chosen, contractors would still be required to report discounts, rebates and other applicable credits, and school food authorities would still be required to limit expenditures of nonprofit school food service account funds to net allowable costs.

Applicability of the OMB Cost Circulars to School Food Authority Contracts

Two comments were received on the proposed rule's provision that allowable costs be identified by the contractor in accordance with applicable OMB Cost Circulars (A–87 Cost Principles for State, Local Governments and Indian Tribal Governments and A–122 Cost Principles of Non-profit Organizations). These commenters asserted that the cost principles contained within the Federal Acquisition Regulations (FAR) should be used to determine allowable costs that result from contracts with commercial organizations rather than cost principles contained in the OMB Cost Circulars applicable to public and private nonprofit school food authorities.

The governing Department regulations (§§ 3016.22(b) and 3019.27) make clear that for each type of organization there is a set of Federal principles for determining allowable costs. The determination is made based on the type of recipient incurring the costs under the Federal program. Since commercial organizations are not eligible recipients of the school nutrition funds provided by FNS, their only role can be that of a contractor to an eligible recipient (*i.e.*, a school food authority). As an eligible recipient of federal funds, a public school food authority must use OMB Circular A–87 to determine whether costs are allowable, while a private nonprofit school food authority (*e.g.*, in the case of a parochial school) must use OMB Circular A–122 to make this determination. Only when a commercial organization is contracting directly with the Federal government would the FAR (48 CFR part 31, Subpart 31.2) and its applicable Cost Accounting Standards (48 CFR 9901.306) be used to determine allowable costs.

Ultimately, the school food authority, not its contractor, is responsible for ensuring that expenditures from the nonprofit school food service account are allowable costs as determined in accordance with the applicable OMB cost circular. This is not a new requirement. School food authorities have been subject to the OMB cost circulars since November 10, 1981, when the Department issued 7 CFR 3015, Uniform Federal Assistance Regulations (46 FR 55640). Further, limitations on claiming only allowable costs have been in place for school food authorities since at least January 1, 1967 (32 FR 33).

A related issue concerning the applicability of the FAR to school food service contracts is the recovery of administrative cost overhead charges from retained discounts and rebates. In this case, one commenter asserted that contractors should be allowed to retain rebates and discounts to cover those corporate indirect costs that are not included in the fixed fee component of their cost reimbursable contracts, and that such actions were permissible for contractors subject to the FAR at 48 CFR part 31, Subpart 31.2. The commenter further asserted that FNS should allow such practices. We disagree. As discussed above, the FAR does not apply to any school food service contracts. Therefore, these suggested practices are not adopted in this final rule.

The same commenter also asserted that even if the FAR did not apply to contracts with school food authorities, the OMB cost circulars would allow the contractor to retain the discounts, rebates, and other applicable credits earned on the cost component of its contracts in order to offset its administrative costs charged through its fixed fee. Again, the Department disagrees. The effect of the commenter's position could unnecessarily increase nonprofit school food service expenditures. A cost reimbursable with fixed fee contract consists of the cost

component and the fixed fee component. The rebates, discounts and other applicable credits subject to the rulemaking are earned through the cost component of the contract, not the contractor's fixed fee component.

If FNS accepted the commenter's position, potential contractors could have an unfair advantage over school food authorities. Without full disclosure of the costs a contractor will actually charge, full and open competition is compromised because the school food authority cannot determine which of the respondents has made the most advantageous offer, taking into consideration price and other factors. The outcome of the commenter's position would be that a school food authority could not rely on the price a contractor bid or the contractual agreement into which it entered.

This final rulemaking does not affect how a contractor establishes its full administrative costs in its fixed fee since this is a business decision. However, the principle of a fixed price is that the price is fixed in the manner and for the period of time specified in the contract. We are not aware of any cost principle or procurement provision that permits a contractor to increase the fixed price component of a contract without disclosure of the change and the agreement of the other party to the contract. When a potential contractor submits a fixed price offer, is awarded a contract based on the price, and then contractually agrees to that price, the contractor may not violate the terms of its contract by increasing that price by retaining undisclosed rebates, discounts or other applicable credits.

This confirms one of the key points underlying the issuance of the proposed rule as well as this final rule, which is that school food authorities must clearly specify how costs must be billed to the school food authority in order for a potential contractor to determine which costs should be included in its fixed fee.

In order to clarify what can be included in fixed fees, the newly added definition of ''fixed fee'' at §§ 210.2, 215.2 and 220.2 specifies that the contractor's direct and indirect administrative costs and profit allocable to the contract may be included. A potential contractor is free to determine what portion of its overhead and indirect administrative costs is allocable to a contract in its fixed fee component. However, if a potential contractor chooses to exclude such costs from the fixed fee component, attempting to recover these costs by retaining discounts, rebates and other applicable credits earned through the cost reimbursable portion of the contract is unallowable. If a school food authority permits the contractor to retain these discounts, rebates, and applicable credits the school food authority is responsible for ensuring that the amount that these discounts, rebates, and credits represent is returned the nonprofit school food service account.

Contractor Administrative Costs

One commenter asserted that contractors should have the option of charging the school food authority a fee for late payments. The commenter did not explain why he believed such charges were prohibited or how the proposed rule would interfere in a contractor's right to include a provision requiring payment of late fees in a contract with a school food authority. There is no provision in this final rule or elsewhere in any of the Child Nutrition Program or Department regulations that would prevent a contractor from negotiating an agreement that imposes a fee when the school food authority fails to pay its debts in a timely manner. In the past, FNS has affirmed the right of contractors to request and enforce provisions addressing the imposition of late payment fees in contracts, as long as such provisions do not conflict with applicable State and local procurement laws and regulations. However, we also continue to maintain the position that the school food authority may not use its nonprofit school food service account funds to pay the cost of such fees. These fees represent fines and penalties, which are unallowable costs under the applicable OMB cost circulars. In keeping with the provisions of this final rulemaking, the contractor would be required to identify any late payment charge on its billing documents as an unallowable cost (*i.e.*, a cost that cannot be funded from the nonprofit school food service account).

Two commenters requested clarification that any added costs resulting from implementing this final rule would be allowable charges to school food authorities. Neither of the commenters specifically identified where they would incur increased costs or the amount of any increase, but we would expect any increased costs to be incurred in the allocation and records maintenance of discounts, rebates, and other applicable credits to school food authorities, and/or in the identification and reporting of allowable and unallowable costs. Contractors already track the costs that are billed to school food authorities and have accounting and billing systems in place for school food authority contracts. Further, under Generally Accepted Accounting Principles and good business practices, these contractors maintain systems to track and report discounts and rebates. Any additional cost incurred by contractors for implementing the provisions of this regulation is an element of a company's administrative expenses and is allocable and may be included in the fixed fee component of a cost reimbursable contract. The decision as to whether to record the expense as an overhead, accounting or management cost is a corporate financial management decision.

State Agency Review of Procurement Documents

Sections 210.16(a)(10), 210.19(a)(6), 215.14a(c)(1) and 220.7(d)(1)(ix) of the proposed rule required State agency review and approval of contracts and contract amendments between school food authorities and food service management companies prior to each contract's execution to ensure that such contracts comply with all program requirements. If a school food authority fails to make changes required by the State agency, then the proposed rule provided at §§ 210.19(a)(2), 215.a(c)(3) and 220.16(c)(3) that all costs associated with such contracts would be unallowable charges to the nonprofit school food service account.

One commenter was concerned that the proposal for the State agency to review the school food authority's food service management company contract prior to its execution would place a substantial burden on the State agency. The commenter viewed this review as a new requirement. It is not. FNS only proposed to change the timing of this review, not its scope.

Under current regulations, State agencies generally do not review school food authority contracts until after the contracts have been executed (*i.e.*, signed by the school food authority and the contractor). Unfortunately, when the State agency finds problems with the terms of an already executed contract, it may be too late to remedy the problems for the current contract, except when State or local laws and procedures permit contract nullification. Since the school food authority is bound to fulfill its contract terms, in the most serious cases, the State agency's only recourse is to disallow all costs resulting from the contract. In this case, school food authorities may not use the nonprofit school food service account to pay these costs.

One State agency suggested that a school food authority's compliance with procurement requirements be included in the Single Audit. Since an audit is conducted on a prior period, it would be

too late to correct any deficiencies that are found. Generally the only option to respond to audit deficiencies is to disallow the costs associated with noncompliance and seek corrective action to prevent recurrence of the problem. Cost disallowances can seriously undermine the financial integrity of the school's nutrition programs for children.

FNS' intent in moving the State agency review of food service management company contracts from after execution to before execution is to provide a means for identifying and correcting problems in contracts before they are signed. This approach helps ensure that school food authorities are not routinely subject to cost disallowances.

Another State agency expressed concern that the proposed rule at § 210.19(a)(6) would require a State agency to review previously approved prototype food service management company contracts even when no changes had been made to the contract. This was not our intent, nor do we believe this will occur. This final rulemaking requires school food authorities using a State agency pre-approved prototype food service management company contract to obtain prior written approval of the State agency only when changes are made to that contract (§§ 210.16(a)(10) and 220.7(d)(1)(ix)). In response to this comment, we have added a corresponding sentence at § 210.19(a)(6) of this final rule to clarify that when a school food authority is using a State agency prototype food service management company contract, the State agency is only required to review the changes made to that prototype contract.

A third State agency, which from the description of its current actions already has an extensive preapproval process for food service management company contracts, expressed concern that the proposed change would impose an additional review on top of the review it already performs. FNS will work with individual State agencies to ensure that any changes resulting from implementing this final rulemaking do not duplicate or diminish a State agency's current approval process. Two State agencies indicated that pre-execution reviews of food service management company contracts are already occurring; four additional commenters supported the proposal.

One commenter suggested nonsubstantive rewording of certain sentences at § 210.16(a)(9) and (a)(10). We agree that the commenter's proposed changes make the provisions easier to read and have amended § 210.16(a)(9) and (a)(10) and the corresponding provisions at § 220.7(d)(1)(viii) and (d)(1)(ix) of this final rule accordingly. We also added language to § 210.19(a)(6) to clarify that State agency review of contracts includes review of the supporting documentation to the contract, including the request for proposal or invitation for bid.

Other commenters requested that the regulation permit the State agency flexibility in establishing due dates for school food authority procurement documents. Two commenters requested more specific regulatory authority to withhold payments when school food authorities fail to comply with a request for timely submission of required documents.

Currently, sufficient regulatory authority exists to permit State agencies to establish reasonable due dates consistent with their resource and work load limitations. However, this final rule amends §§ 210.16(a)(10), 210.19(a)(6) and 220.7(d)(1)(ix) to permit State agencies to establish due dates for submission of the documents needed for this approval. Failure of a school food authority to respond to these due dates would result in regulatory noncompliance, and the school food authority's failure to correct this deficiency could result in the withholding of reimbursement pursuant to current §§ 210.22 and 220.18.

Miscellaneous Comments

Several commenters expressed opinions on the provision in the proposed rule at § 210.16(b)(1) that permits a food service management company to submit the 21-day menu and requires compliance with the menu for the first 21 days of food service operations. FNS was not proposing any changes to this provision, but instead used the opportunity of the proposed rulemaking to restructure a cumbersome sentence.

One commenter questioned FNS' legal authority to issue the proposed regulation. The Secretary's authority to issue regulations is found at 42 U.S.C. 1779 which authorizes the Secretary to prescribe such regulations as deemed necessary to carry out the provisions of the Child Nutrition Act of 1966 and the Richard B. Russell National School Lunch Act.

One commenter suggested clarifying that FNS regulations implement applicable OMB circulars at § 210.21(a) and the deletion of the last sentence at § 210.21(c). We agree and have amended § 210.21(a) and (c) as well as the corresponding provisions at §§ 215.14a(a), 215.14(a)(c), 220.16(a) and 220.16(c) accordingly.

Another commenter requested clarification as to whether Department regulation 7 CFR part 3015 still applies to FNS's school nutrition programs. While the majority of the Department's requirements that apply to the school nutrition programs have been moved from 7 CFR part 3015 into 7 CFR parts 3106 and 3019, some requirements, particularly those affecting the award of discretionary grants, acknowledgment on audio visual materials and procedures for prior approval of costs, still remain in 7 CFR part 3015.

One commenter requested clarification that the prohibition at § 3016.60(b) that contractors may not develop or draft specifications, requirements, statements of work, invitations for bid, requests for proposal, contract terms and conditions or other document for use by a school food authority would not apply to winning bidders negotiating contract terms since conducting a procurement does not include post-procurement activities. While 7 CFR part 3016 was not the subject of the proposed rulemaking, it is important to correct the commenter's misunderstanding of what constitutes the procurement process. The procurement process includes all phases of the process from the initial determination that goods and services are needed until the conclusion of the record retention period following the termination of the contract period. While negotiating contract terms is acceptable, potential contractors are not permitted to draft contract terms and conditions. This position is consistent with §§ 3016.36(b) and 3016.60(b), and with the direction provided in Conference Report 105–786 accompanying the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Pub. L. 105–336).

This same commenter also expressed concerns that under the Federalism principles it is inappropriate for FNS to assist State agencies in the development and drafting of procurement documents. Responding to requests for assistance from State agencies does not conflict with the principles of Federalism, nor does providing assistance to State agencies in their development of procurement documents run counter to the report language cited. It is unreasonable to expect State agencies to develop appropriate procurement materials without access to FNS's resources and expertise concerning federal procurement rules.

Ethics in Long Term Beverage and Food Service Management Company Procurements

The proposed rule requested comments on whether additional regulatory action is needed concerning ethical practices associated with the procurement of long term beverage and food service management company procurements. FNS did not propose new regulatory requirements to address ethics in contracting since minimum standards already exist within the Department's regulations (§ 3016.36(b)(3) and § 3019.42).

Three commenters indicated their opinions that FNS needs to undertake additional efforts in this area. Commenters also supported the need for additional efforts by FNS to address long term beverage contracting issues. Some of these commenters were specific about ethical issues in the procurement of long term beverage and food service management contracts, while others addressed the ethics issue on a broader scale. One commenter requested that the final regulations prohibit contractors from offering incentive payments or providing payments in advance of contract execution since such payments could subvert full and open competition. We do not disagree with the commenter that an inducement to contract conflicts with full and open competition. However, because we did not propose to issue regulations addressing ethics at this time, it would be inappropriate for us to do so in a final rulemaking. Pursuant to the Department regulations, school food authorities are currently required to have a written code of conduct that prohibits unethical actions in the procurement process.

Another commenter recommended that FNS require State agencies and school food authorities to obtain written financial interest statements from potential consultants which would require these consultants to disclose possible conflicts of interest before engaging in consulting and technical assistance efforts. Again, while we agree that such statements represent good business practice, it would be inappropriate at this time to issue final regulations requiring such statements.

Given the comments received on the issue of ethics in contracting, FNS has determined it is appropriate to include a reference to its existing ethics and integrity requirements at §§ 210.21(c), 215.14a and 220.16(c). FNS will continue to monitor procurement ethics and integrity as this final rule is implemented and will evaluate if additional actions are needed to address these issues.

III. Implementation

FNS also received comments on implementation timeframes for a final rulemaking. Some of the commenters requested a moratorium on implementation for existing contracts between school food authorities and food service management companies until after all contract renewals had been completed. These commenters viewed the one-year term of a food service management company contract with up to four additional one-year renewals as a single contract. That is not correct. Food service management company contracts are one year in duration. The decision to renew the contract is an affirmative decision by both parties. Generally each renewal period is accompanied by some change in the contract terms, usually related to the change in FNS' school meal reimbursement rates. We are also aware that some contracts contain a provision that results in renewal unless notification of nonrenewal is provided. This type of provision does not create a multi-year contract.

One commenter requested implementation over a period of time to permit an orderly process for school food authorities to develop appropriate procurement documents and provide sufficient time for State agencies to review those documents.

We recognize that in some cases, immediate implementation of these regulatory changes would create an unreasonable burden on school food authorities, State agencies and contractors. However, delaying implementation for years is more unreasonable. In considering how best to implement the changes in procurements required under this final rulemaking, we have determined that there is no reason to delay implementation for procurements yet to be conducted, but consideration is needed for existing contracts. Such consideration would take into account the available renewal periods under those contracts and procurement solicitations that have been issued but not yet awarded as of the date this final rulemaking is effective. Each State agency should have flexibility in establishing implementation schedules within its own State.

In balancing the critical need for prompt implementation against these considerations, we have established the following implementation schedule:

(1) The regulations are applicable for all new solicitations issued on or after the effective date of this final rule.

(2) For those solicitations for contracts issued prior to the effective date of this final rule:

a. School food authorities and State agencies with contracts with a term of 12 months or fewer remaining are exempt from applying the provisions of this rulemaking to those contracts;

b. With State agency approval, school food authorities with contracts that have annual renewal provisions may delay implementation until expiration of the current contract plus one 12-month renewal period; and

c. With State agency approval, school food authorities with contracts that have a term of more than 12 months (i.e., contracts with entities other than food service management companies) may delay implementation up to 24 months from the effective date of this regulation when the solicitation for the contract was issued prior to the effective date of this regulation.

The annual term of most school food authority food service management company contracts mirrors the July 1–June 30 school year. This means that a school food authority that entered into the first year of its contract effective for the July 1, 2007–June 30, 2008 school year may, with State agency approval, renew the contract for the July 1, 2008–June 30, 2009 school year, but must conduct a new procurement that meets the requirements of these regulations for the school year that begins on July 1, 2009. State agencies are free to establish shorter timeframes for implementation or may require some school food authorities to implement the requirements sooner than others. However, in no case may a school food authority be permitted to delay implementation beyond the timeframes specified above.

IV. Technical Assistance

Many commenters, particularly State administering agencies and the School Nutrition Association, requested training and technical assistance on this final rule as well as on procurement requirements and allowable costs in general. The Department agrees and will, within current resource constraints, do its best to provide training and technical assistance on this rule after publication. We will also continue to issue guidance as the need arises. However, neither the Department's planned training nor its guidance will address specific State and local procurement requirements. Public school food authorities must follow their own applicable State and local procurement procedures and will only revert to Federal requirements when applicable State and local requirements

are less restrictive. FNS is not the appropriate source for interpreting State and local requirements or for providing training on these requirements. We encourage State administering agencies, school food authorities and industry partners to look for these resources within their own State and local jurisdictions.

V. Procedural Matters

Executive Order 12866

This rule has been determined to be significant and was reviewed by the Office of Management and Budget in conformance with Executive Order 12866.

Regulatory Impact Analysis

Need for Action

This action is needed to remedy deficiencies in school food authority procurements that have been identified in audits and program reviews, and to make the procurement requirements and consequences for failing to take corrective action consistent in the National School Lunch, Special Milk and School Breakfast Programs.

Benefits

School food authorities will benefit from the provisions of this rule because they will better understand their responsibilities for conducting proper procurements and consequences for failing to conduct proper procurements. State agencies will have the authority to review school food authority procurement documents and procedures to identify deficiencies and obtain corrective action, thereby minimizing the potential for the misuse of program funds. Competition will be enhanced because potential contractors will be provided with more specific information that will allow them to prepare more appropriate and competitive responses to school food authority solicitations.

Costs

Any increases in costs resulting from this final rule are expected to result from the contractor's allocation and records maintenance of rebates, discounts, and other applicable credits to school food authorities and the identification and reporting of allowable and unallowable costs. However, contractors already have accounting, reporting and records maintenance systems in place to track and report the costs that are billed to school food authorities. Further, under generally accepted accounting principles and good business practices, these contractors maintain systems to track and report rebates and discounts. For these reasons, it is not expected that contractors will incur a significant increase in costs due to these requirements. However, any additional costs incurred by contractors for implementing the provisions of these regulations would be part of the contractor's administrative expenses and could be included in the fixed fee component of a cost reimbursable contract.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Nancy Montanez Johner, Under Secretary for Food, Nutrition and Consumer Services has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect school food authorities, State agencies and cost reimbursable contractors. School food authorities will be required to limit the expenditure of nonprofit school food service account funds to net allowable costs, while cost reimbursable contractors of school food authorities will be required to provide information to permit school food authorities to make this determination. State agencies will be required to review contracts between school food authorities and food service management companies prior to their execution. While the effect of this rule may require potential contractors, selected contractors and school food authorities to amend the bidding process and make adjustments to accountability activities during a contract period, these process changes will not have a significant economic impact on those small entities.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, the Department generally must prepare a written statement, including a cost/benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) that impose costs on State, local, or tribal governments or to the private sector of $100 million or more in any one year. This rule is, therefore, not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The National School Lunch Program, Special Milk Program and School Breakfast Program are listed in the Catalog of Federal Domestic Assistance under No. 10.555, 10.556, and 10.553, respectively. For the reasons set forth in the final rule in 7 CFR part 3015, Subpart V and related Notice published at 48 FR 29114, June 24, 1983, these programs are included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Executive Order 13132

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132. FNS has considered the impact of this rule on State and local governments and has determined that this rule does not have Federalism implications. This rule does not impose substantial or direct compliance costs on State and local governments. Therefore, under Section 6(b) of the Executive Order, a federalism summary impact statement is not required.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have a retroactive effect unless so specified in the **DATES** paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

Under Department Regulation 4300–4, Civil Rights Impact Analysis, FNS has

reviewed this final rule to identify and address any major civil rights impacts the final rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, FNS has determined that this rule would not in any way limit or reduce participants' ability to participate in the Child Nutrition Programs on the basis of an individual's or group's race, color, national origin, sex, age or disability. FNS found no factors that would negatively and disproportionately affect any group of individuals.

Paperwork Reduction Act

FNS is revising the regulations governing procedures related to the procurement of goods and services in the National School Lunch Program, School Breakfast Program and Special Milk Program to remedy deficiencies identified in audits and program reviews. This final rule makes changes in a school food authority's responsibilities for proper procurement procedures and contracts, limits a school food authority's use of nonprofit school food service account funds to costs resulting from proper procurements and contracts, and clarifies a State agency's responsibility to review and approve school food authority procurement procedures and contracts.

As a result, we are amending § 210.16(a) by adding two requirements for school food authorities that contract with food service management companies to manage their food service operations. First, § 210.16(a)(9) requires school food authorities to obtain written approval of invitations for bids and requests for proposals when required by the State agency and to incorporate all State agency changes before issuance. Second, § 210.16(a)(10) requires the school food authority to ensure that the State agency has reviewed and approved contract terms and to incorporate all changes before any contract or amendment to an existing contract is executed. We are also amending § 210.19(a)(6) to specify that State agencies must review contracts, including amendments, and all supporting documentation, before execution of the contract. Current regulations require State agencies to annually review each contract to ensure compliance, which is usually done after the contract has been executed. Since the current requirement does not specify the timing of the review, additional time will be needed to review the contract and its related documents. As outlined below, these sections contain specific public reporting and recordkeeping requirements that require clearance under the Paperwork Reduction Act of 1995. Respondents to this collection are State agencies and school food authorities that employ a food service management company in the operation of their nonprofit school food service.

Burden associated with this rule has been approved by OMB under OMB Control Number 0584–0544. State agencies and school food authorities that operate the School Breakfast and Special Milk Programs also operate the National School Lunch Program; therefore, the burden will be merged into OMB #0584–0006, National School Lunch Program, once this rule becomes effective.

Title: Procurement Requirements for the National School Lunch

Title/section & collection description	Annual number of respondents	Frequency of response	Average burden per response (hours)	Estimated annual burden hours
Recordkeeping:				
210.19(a)(6)—State agency review and approve contracts prior to execution	57	21.78	0.167	207.324
Current Approved under #0584–0006 New Burden Requirements	57	30	.4	684
Difference				476.676
Reporting:				
210.16(a)(9) & (10)—School food authority provide procurement documents to State agency for approval. Current Approved under #0584–0006	1,648	1	.25	412
New Burden Requirements	1,648	1	1.5	2,472
Difference				2,060
Total Burden Requested				2,537

E-Government Act Compliance

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

List of Subjects

7 CFR Part 210

Grant programs—education, Grant programs—health, Infants and children, Nutrition, Penalties, Reporting and recordkeeping requirements, School breakfast and lunch programs.

7 CFR Part 215

Food assistance programs, Grant programs—education, Grant programs—health, Infants and children, Milk, Reporting and recordkeeping requirements.

7 CFR Part 220

Grant programs—education, Grant programs—health, Infants and children, Nutrition, Penalties, Reporting and recordkeeping requirements, School breakfast and lunch programs.

■ Accordingly, 7 CFR parts 210, 215 and 220 are amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 42 U.S.C. 1751–1760, 1779.

■ 2. In § 210.2, add, in alphabetical order, the definitions of ''Applicable credits'', ''Contractor'', ''Cost reimbursable contract'', ''Fixed fee'' and ''Nonprofit school food service account'' to read as follows:

§ 210.2 Definitions.

* * * * *

Applicable credits shall have the meaning established in Office of Management and Budget Circulars A–87, C(4) and A–122, Attachment A, A(5),

respectively. For availability of OMB circulars referenced in this definition see 5 CFR 1310.3.

* * * * *

Contractor means a commercial enterprise, public or nonprofit private organization or individual that enters into a contract with a school food authority.

Cost reimbursable contract means a contract that provides for payment of incurred costs to the extent prescribed in the contract, with or without a fixed fee.

* * * * *

Fixed fee means an agreed upon amount that is fixed at the inception of the contract. In a cost reimbursable contract, the fixed fee includes the contractor's direct and indirect administrative costs and profit allocable to the contract.

* * * * *

Nonprofit school food service account means the restricted account in which all of the revenue from all food service operations conducted by the school food authority principally for the benefit of school children is retained and used only for the operation or improvement of the nonprofit school food service.

* * * * *

■ 3. In § 210.16:

■ a. Amend paragraph (a)(7) by removing the word ''and'' at the end of the paragraph;

■ b. Amend paragraph (a)(8) by removing the period at the end of the paragraph and adding a semicolon in its place;

■ c. Add paragraphs (a)(9) and (a)(10); and

■ d. Amend paragraph (b)(1) by removing the second sentence and adding a new sentence in its place.

The additions read as follows:

§ 210.16 Food service management companies.

(a) * * *

(9) Obtain written approval of invitations for bids and requests for proposals before their issuance when required by the State agency. The school food authority must incorporate all State agency required changes to its solicitation documents before issuing those documents; and

(10) Ensure that the State agency has reviewed and approved the contract terms and that the school food authority has incorporated all State agency required changes into the contract or amendment before any contract or amendment to an existing food service management company contract is executed. Any changes made by the school food authority or a food service management company to a State agency pre-approved prototype contract or State agency approved contract term must be approved in writing by the State agency before the contract is executed. When requested, the school food authority must submit all procurement documents, including responses submitted by potential contractors, to the State agency, by the due date established by the State agency.

(b) * * *

(1) * * * A school food authority with no capability to prepare a cycle menu may, with State agency approval, require that each food service management company include a 21-day cycle menu, developed in accordance with the provisions of § 210.10, with its bid or proposal. * * *

* * * * *

■ 4. In § 210.19:

■ a. Amend paragraph (a)(2) by adding two new sentences between sentences two and three; and

■ b. Amend paragraph (a)(6) by removing the first sentence and adding four new sentences in its place.

The additions read as follows:

§ 210.19 Additional responsibilities.

(a) * * *

(2) * * * All costs resulting from contracts that do not meet the requirements of this part are unallowable nonprofit school food service account expenses. When the school food authority fails to incorporate State agency required changes to solicitation or contract documents, all costs resulting from the subsequent contract award are unallowable charges to the nonprofit school food service account. * * *

* * * * *

(6) * * * Each State agency shall annually review each contract (including all supporting documentation) between any school food authority and food service management company to ensure compliance with all the provisions and standards set forth in this part before execution of the contract by either party. When the State agency develops a prototype contract for use by the school food authority that meets the provisions and standards set forth in this part, this annual review may be limited to changes made to that contract. Each State agency shall review each contract amendment between a school food authority and food service management company to ensure compliance with all the provisions and standards set forth in this part before execution of the amended contract by either party. The State agency may establish due dates for submission of the contract or contract amendment documents. * * *

* * * * *

■ 5. In § 210.21:

■ a. Revise paragraph (a);

■ b. Revise paragraph (c); and

■ c. Add a new paragraph (f).

The revisions and addition read as follows:

§ 210.21 Procurement.

(a) *General.* State agencies and school food authorities shall comply with the requirements of this part and 7 CFR Part 3016 or 7 CFR Part 3019, as applicable, which implement the applicable Office of Management and Budget Circulars, concerning the procurement of all goods and services with nonprofit school food service account funds.

* * * * *

(c) *Procedures.* The State agency may elect to follow either the State laws, policies and procedures as authorized by §§ 3016.36(a) and 3016.37(a) of this title, or the procurement standards for other governmental grantees and all governmental subgrantees in accordance with § 3016.36(b) through (i) of this title. Regardless of the option selected, States must ensure that all contracts include any clauses required by Federal statutes and executive orders and that the requirements of § 3016.60(b) and (c) of this title are followed. A school food authority may use its own procurement procedures which reflect applicable State and local laws and regulations, provided that procurements made with nonprofit school food service account funds adhere to the standards set forth in this part and §§ 3016.36(b) through 3016.36(i), 3016.60 and 3019.40 through 3019.48 of this title, as applicable, and in the applicable Office of Management and Budget Circulars. School food authority procedures must include a written code of standards of conduct meeting the minimum standards of § 3016.36(b)(3) or § 3019.42 of this title, as applicable.

(1) *Pre-issuance review requirement.* The State agency may impose a pre-issuance review requirement on a school food authority's proposed procurement. The school food authority must make available, upon request by the State agency, its procurement documents, including but not limited to solicitation documents, specifications, evaluation criteria, procurement procedures, proposed contracts and contract terms. School food authorities shall comply with State agency requests for changes to procurement procedures and solicitation and contract documents to ensure that, to the State agency's satisfaction, such procedures and

documents reflect applicable procurement and contract requirements and the requirements of this part.

(2) *Prototype solicitation documents and contracts.* The school food authority must obtain the State agency's prior written approval for any change made to prototype solicitation or contract documents before issuing the revised solicitation documents or execution of the revised contract.

(3) *Prohibited expenditures.* No expenditure may be made from the nonprofit school food service account for any cost resulting from a procurement failing to meet the requirements of this part.

* * * * *

(f) *Cost reimbursable contracts*—(1) *Required provisions.* The school food authority must include the following provisions in all cost reimbursable contracts, including contracts with cost reimbursable provisions, and in solicitation documents prepared to obtain offers for such contracts:

(i) Allowable costs will be paid from the nonprofit school food service account to the contractor net of all discounts, rebates and other applicable credits accruing to or received by the contractor or any assignee under the contract, to the extent those credits are allocable to the allowable portion of the costs billed to the school food authority;

(ii)(A) The contractor must separately identify for each cost submitted for payment to the school food authority the amount of that cost that is allowable (can be paid from the nonprofit school food service account) and the amount that is unallowable (cannot be paid from the nonprofit school food service account); or

(B) The contractor must exclude all unallowable costs from its billing documents and certify that only allowable costs are submitted for payment and records have been established that maintain the visibility of unallowable costs, including directly associated costs in a manner suitable for contract cost determination and verification;

(iii) The contractor's determination of its allowable costs must be made in compliance with the applicable Departmental and Program regulations and Office of Management and Budget cost circulars;

(iv) The contractor must identify the amount of each discount, rebate and other applicable credit on bills and invoices presented to the school food authority for payment and individually identify the amount as a discount, rebate, or in the case of other applicable credits, the nature of the credit. If approved by the State agency, the school food authority may permit the contractor to report this information on a less frequent basis than monthly, but no less frequently than annually;

(v) The contractor must identify the method by which it will report discounts, rebates and other applicable credits allocable to the contract that are not reported prior to conclusion of the contract; and

(vi) The contractor must maintain documentation of costs and discounts, rebates and other applicable credits, and must furnish such documentation upon request to the school food authority, the State agency, or the Department.

(2) *Prohibited expenditures.* No expenditure may be made from the nonprofit school food service account for any cost resulting from a cost reimbursable contract that fails to include the requirements of this section, nor may any expenditure be made from the nonprofit school food service account that permits or results in the contractor receiving payments in excess of the contractor's actual, net allowable costs.

§ 210.24 [Amended]

■ 6. In § 210.24, amend the first sentence by removing the words ''7 CFR part 3016 and 7 CFR part 3019, as applicable'' and adding in their place the words ''Departmental regulations at § 3016.43 and § 3019.62 of this title.''

PART 215—SPECIAL MILK PROGRAM

■ 1. The authority citation for part 215 continues to read as follows:

Authority: 42 U.S.C. 1772 and 1779.

■ 2. In § 215.2, add paragraph (c), previously reserved, and paragraphs (e–3), (e–4), (e–5) and (r–1) to read as follows:

§ 215.2 Definitions.

* * * * *

(c) *Applicable credits* shall have the meaning established in Office of Management and Budget Circulars A–87, C(4) and A–122, Attachment A, A(5), respectively. For availability of OMB circulars referenced in this definition, see 5 CFR 1310.3.

* * * * *

(e–3) *Contractor* means a commercial enterprise, public or nonprofit private organization or individual that enters into a contract with a school food authority.

(e–4) *Cost reimbursable contract* means a contract that provides for payment of incurred costs to the extent prescribed in the contract, with or without a fixed fee.

(e–5) *Fixed fee* means an agreed upon amount that is fixed at the inception of the contract. In a cost reimbursable contract, the fixed fee includes the contractor's direct and indirect administrative costs and profit allocable to the contract.

* * * * *

(r–1) *Nonprofit school food service account* means the restricted account in which all of the revenue from the nonprofit milk service maintained for the benefit of children is retained and used only for the operation or improvement of the nonprofit milk service.

* * * * *

■ 3. In § 215.14a;

■ a. Revise paragraph (a);

■ b. Revise paragraph (c); and

■ c. Add a new paragraph (d).

The revisions and addition read as follows:

§ 215.14a Procurement standards.

(a) *General.* State agencies and school food authorities shall comply with the requirements of this part and parts 3015, 3016 and 3019 of this title, as applicable, which implement the applicable Office of Management and Budget Circulars, concerning the procurement of all goods and services with nonprofit school food service account funds.

* * * * *

(c) *Procedures.* The State agency may elect to follow either the State laws, policies and procedures as authorized by §§ 3016.36(a) and 3016.37(a) of this title, or the procurement standards for other governmental grantees and all governmental subgrantees in accordance with § 3016.36(b) through (i) of this title. Regardless of the option selected, States must ensure that all contracts include any clauses required by Federal statutes and executive orders and that the requirements of § 3016.60(b) and (c) of this title are followed. The school food authority or child care institution may use its own procurement procedures which reflect applicable State or local laws and regulations, provided that procurements made with nonprofit school food service account funds adhere to the standards set forth in this part and §§ 3016.36(b) through 3016.36(i), 3016.60 and §§ 3019.40 through 3019.48 of this title, as applicable, and in the applicable Office of Management and Budget Circulars. School food authority procedures must include a written code of standards of conduct meeting the minimum standards of § 3016.36(b)(3) or § 3019.42 of this title, as applicable.

(1) *Pre-issuance review requirement.* The State agency may impose a pre-issuance review requirement on a school food authority's proposed procurement. The school food authority must make available, upon request of the State agency, its procurement documents, including but not limited to solicitation documents, specifications, evaluation criteria, procurement procedures, proposed contracts and contract terms. School food authorities shall comply with State agency requests for changes to procurement procedures and solicitation and contract documents to ensure that, to the State agency's satisfaction, such procedures and documents reflect applicable procurement and contract requirements and the requirements of this part.

(2) *Prototype solicitation documents and contracts.* The school food authority must obtain the State agency's prior written approval for any change made to prototype solicitation or contract documents before issuing the revised solicitation documents or execution of the revised contract.

(3) *Prohibited expenditures.* No expenditure may be made from the nonprofit school food service account for any cost resulting from a procurement failing to meet the requirements of this part.

(d) *Cost reimbursable contracts*—(1) *Required provisions.* The school food authority must include the following provisions in all cost reimbursable contracts, including contracts with cost reimbursable provisions, and in solicitation documents prepared to obtain offers for such contracts:

(i) Allowable costs will be paid from the nonprofit school food service account to the contractor net of all discounts, rebates and other applicable credits accruing to or received by the contractor or any assignee under the contract, to the extent those credits are allocable to the allowable portion of the costs billed to the school food authority;

(ii)(A) The contractor must separately identify for each cost submitted for payment to the school food authority the amount of that cost that is allowable (can be paid from the nonprofit school food service account) and the amount that is unallowable (cannot be paid from the nonprofit school food service account), or

(B) The contractor must exclude all unallowable costs from its billing documents and certify that only allowable costs are submitted for payment and records have been established that maintain the visibility of unallowable costs, including directly associated costs in a manner suitable for contract cost determination and verification;

(iii) The contractor's determination of its allowable costs must be made in compliance with the applicable Departmental and Program regulations and Office of Management and Budget cost circulars;

(iv) The contractor must identify the amount of each discount, rebate and other applicable credit on bills and invoices presented to the school food authority for payment and identify the amount as a discount, rebate, or in the case of other applicable credits, the nature of the credit. If approved by the State agency, the school food authority may permit the contractor to report this information on a less frequent basis than monthly, but no less frequently than annually;

(v) The contractor must identify the method by which it will report discounts, rebates and other applicable credits allocable to the contract that are not reported prior to conclusion of the contract; and

(vi) The contractor must maintain documentation of costs and discounts, rebates and other applicable credits, and must furnish such documentation upon request to the school food authority, the State agency, or the Department.

(2) *Prohibited expenditures.* No expenditure may be made from the nonprofit school food service account for any cost resulting from a cost reimbursable contract that fails to include the requirements of this section, nor may any expenditure be made from the nonprofit school food service account that permits or results in the contractor receiving payments in excess of the contractor's actual, net allowable costs.

■ 4. Redesignate §§ 215.15 through 215.17 as §§ 215.16 through 215.18, respectively; and add a new § 215.15 to read as follows:

§ 215.15 Withholding payments.

In accordance with Departmental regulations at § 3016.43 and § 3019.62 of this title, the State agency shall withhold Program payments in whole or in part, to any school food authority which has failed to comply with the provisions of this part. Program payments shall be withheld until the school food authority takes corrective action satisfactory to the State agency, or gives evidence that such corrective actions will be taken, or until the State agency terminates the grant in accordance with § 215.16. Subsequent to the State agency's acceptance of the corrective actions, payments will be released for any milk served in accordance with the provisions of this part during the period the payments were withheld.

PART 220—SCHOOL BREAKFAST PROGRAM

■ 1. The authority citation for part 220 continues to read as follows:

Authority: 42 U.S.C. 1773, 1779, unless otherwise noted.

■ 2. In § 220.2, add paragraphs (a–1), (d–1), (d–2), (g–1) and (o–3) to read as follows:

§ 220.2 Definitions.

* * * * *

(a–1) *Applicable credits* shall have the meaning established in Office of Management and Budget Circulars A–87, C(4) and A–122, Attachment A, A(5), respectively. For availability of OMB circulars referenced in this definition see 5 CFR 1310.3.

* * * * *

(d–1) *Contractor* means a commercial enterprise, public or nonprofit private organization or individual that enters into a contract with a school food authority.

(d–2) *Cost reimbursable contract* means a contract that provides for payment of incurred costs to the extent prescribed in the contract, with or without a fixed fee.

* * * * *

(g–1) *Fixed fee* means an agreed upon amount that is fixed at the inception of the contract. In a cost reimbursable contract, the fixed fee includes the contractor's direct and indirect administrative costs and profit allocable to the contract.

* * * * *

(o–3) *Nonprofit school food service account* means the restricted account in which all of the revenue from all food service operations conducted by the school food authority principally for the benefit of school children is retained and used only for the operation or improvement of the nonprofit school food service.

* * * * *

■ 3. In § 220.7, revise paragraph (d) to read as follows:

§ 220.7 Requirements for participation.

* * * * *

(d)(1) Any school food authority (including a State agency acting in the capacity of a school food authority) may contract with a food service management company to manage its food service operation in one or more of its schools. However, no school or school food authority may contract with a food service management company to operate an a la carte food service unless

the company agrees to offer free, reduced price and paid reimbursable breakfasts to all eligible children. Any school food authority that employs a food service management company in the operation of its nonprofit school food service shall:

(i) Adhere to the procurement standards specified in § 220.16 when contracting with the food service management company;

(ii) Ensure that the food service operation is in conformance with the school food authority's agreement under the Program;

(iii) Monitor the food service operation through periodic on-site visits;

(iv) Retain control of the quality, extent, and general nature of its food service, and the prices to be charged the children for meals;

(v) Retain signature authority on the State agency-school food authority agreement, free and reduced price policy statement and claims;

(vi) Ensure that all federally donated foods received by the school food authority and made available to the food service management company accrue only to the benefit of the school food authority's nonprofit school food service and are fully utilized therein;

(vii) Maintain applicable health certification and assure that all State and local regulations are being met by a food service management company preparing or serving meals at a school food authority facility;

(viii) Obtain written approval of invitations for bids and requests for proposals before their issuance when required by the State agency. The school food authority must incorporate all State agency required changes to its solicitation documents before issuing those documents; and

(ix) Ensure that the State agency has reviewed and approved the contract terms and the school food authority has incorporated all State agency required changes into the contract or amendment before any contract or amendment to an existing food service management company contract is executed. Any changes made by the school food authority or a food service management company to a State agency pre-approved prototype contract or State agency approved contract term must be approved in writing by the State agency before the contract is executed. When requested, the school food authority must submit all procurement documents, including responses submitted by potential contractors, to the State agency, by the due date established by the State agency.

(2) In addition to adhering to the procurement standards under this part, school food authorities contracting with food service management companies shall ensure that:

(i) The invitation to bid or request for proposal contains a 21-day cycle menu developed in accordance with the provisions of § 220.8, to be used as a standard for the purpose of basing bids or estimating average cost per meal. A school food authority with no capability to prepare a cycle menu may, with State agency approval, require that each food service management company include a 21-day cycle menu, developed in accordance with the provisions of § 220.8, with its bid or proposal. The food service management company must adhere to the cycle for the first 21 days of meal service. Changes thereafter may be made with the approval of the school food authority; and

(ii) Any invitation to bid or request for proposal indicate that nonperformance subjects the food service management company to specified sanctions in instances where the food service management company violates or breaches contract terms. The school food authority shall indicate these sanctions in accordance with the procurement provisions stated in § 220.16.

(3) Contracts that permit all income and expenses to accrue to the food service management company and ''cost-plus-a-percentage-of-cost'' and ''cost-plus-a-percentage-of-income'' contracts are prohibited. Contracts that provide for fixed fees such as those that provide for management fees established on a per meal basis are allowed. Contractual agreements with food service management companies shall include provisions which ensure that the requirements of this section are met. Such agreements shall also include the following requirements:

(i) The food service management company shall maintain such records as the school food authority will need to support its Claim for Reimbursement under this part, and shall, at a minimum, report claim information to the school food authority promptly at the end of each month. Such records shall be made available to the school food authority, upon request, and shall be available for a period of 3 years from the date of the submission of the final Financial Status Report, for inspection and audit by representatives of the State agency, of the Department, and of the Government Accountability Office at any reasonable time and place. If audit findings have not been resolved, the records shall be retained beyond the three-year period (as long as required for the resolution of the issues raised by the audit);

(ii) The food service management company shall have State or local health certification for any facility outside the school in which it proposes to prepare meals and the food service management company shall maintain this health certification for the duration of the contract; and

(iii) No payment is to be made for meals that are spoiled or unwholesome at time of delivery, do not meet detailed specifications as developed by the school food authority for each food component specified in § 220.8, or do not otherwise meet the requirements of the contract. Specifications shall cover items such a grade, purchase units, style, condition, weight, ingredients, formulations, and delivery time.

(4) The contract between a school food authority and food service management company shall be of a duration of no longer than 1 year and options for the yearly renewal of the contract shall not exceed 4 additional years. All contracts shall include a termination clause whereby either party may cancel for cause with 60-day notification.

* * * * *

■ 4. In § 220.16,

■ a. Revise paragraphs (a) and (c); and

■ b. Add a new paragraph (e).

The revisions and addition read as follows:

§ 220.16 Procurement standards.

(a) *General.* State agencies and school food authorities shall comply with the requirements of this part and parts 3015, 3016 and 3019 of this title, as applicable, which implement the applicable Office of Management and Budget Circulars, concerning the procurement of all goods and services with nonprofit school food service account funds.

* * * * *

(c) *Procedures.* The State agency may elect to follow either the State laws, policies and procedures as authorized by §§ 3016.36(a) and 3016.37(a) of this title, or the procurement standards for other governmental grantees and all governmental subgrantees in accordance with § 3016.36(b) through (i) of this title. Regardless of the option selected, States must ensure that all contracts include any clauses required by Federal statutes and executive orders and that the requirements of § 3016.60(b) and (c) of this title are followed. The school food authority may use its own procurement procedures which reflect applicable State and local laws and regulations, provided that procurements made with

nonprofit school food service account funds adhere to the standards set forth in this part and §§ 3016.36(b) through 3016.36(i), 3016.60 and §§ 3019.40 through 3019.48 of this title, as applicable, and the applicable Office of Management and Budget Circulars. School food authority procedures must include a written code of standards of conduct meeting the minimum standards of § 3016.36(b)(3) or § 3019.42 of this title, as applicable.

(1) *Pre-issuance review requirement.* The State agency may impose a pre-issuance review requirement on a school food authority's proposed procurement. The school food authority must make available, upon request of the State agency, its procurement documents, including but not limited to solicitation documents, specifications, evaluation criteria, procurement procedures, proposed contracts and contract terms. School food authorities shall comply with State agency requests for changes to procurement procedures and solicitation and contract documents to ensure that, to the State agency's satisfaction, such procedures and documents reflect applicable procurement and contract requirements and the requirements of this part.

(2) *Prototype solicitation documents and contracts.* The school food authority must obtain the State agency's prior written approval for any change made to prototype solicitation or contract documents before issuing the revised solicitation documents or execution of the revised contract.

(3) *Prohibited expenditures.* No expenditure may be made from the nonprofit school food service account for any cost resulting from a procurement failing to meet the requirements of this part.

* * * * *

(e) *Cost reimbursable contracts*—(1) *Required provisions.* The school food authority must include the following provisions in all cost reimbursable contracts, including contracts with cost reimbursable provisions, and in solicitation documents prepared to obtain offers for such contracts:

(i) Allowable costs will be paid from the nonprofit school food service account to the contractor net of all discounts, rebates and other applicable credits accruing to or received by the contractor or any assignee under the contract, to the extent those credits are allocable to the allowable portion of the costs billed to the school food authority;

(ii)(A) The contractor must separately identify for each cost submitted for payment to the school food authority the amount of that cost that is allowable (can be paid from the nonprofit school food service account) and the amount that is unallowable (cannot be paid from the nonprofit school food service account), or;

(B) The contractor must exclude all unallowable costs from its billing documents and certify that only allowable costs are submitted for payment and records have been established that maintain the visibility of unallowable costs, including directly associated costs in a manner suitable for contract cost determination and verification;

(iii) The contractor's determination of its allowable costs must be made in compliance with the applicable Departmental and Program regulations and Office of Management and Budget cost circulars;

(iv) The contractor must identify the amount of each discount, rebate and other applicable credit on bills and invoices presented to the school food authority for payment and identify the amount as a discount, rebate, or in the case of other applicable credits, the nature of the credit. If approved by the State agency, the school food authority may permit the contractor to report this information on a less frequent basis than monthly, but no less frequently than annually;

(v) The contractor must identify the method by which it will report discounts, rebates and other applicable credits allocable to the contract that are not reported prior to conclusion of the contract; and

(vi) The contractor must maintain documentation of costs and discounts, rebates, and other applicable credits, and must furnish such documentation upon request to the school food authority, the State agency, or the Department.

(2) *Prohibited expenditures.* No expenditure may be made from the nonprofit school food service account for any cost resulting from a cost reimbursable contract that fails to include the requirements of this section, nor may any expenditure be made from the nonprofit school food service account that permits or results in the contractor receiving payments in excess of the contractor's actual, net allowable costs.

■ 4. Redesignate §§ 220.18 through 220.21 as §§ 220.19 through 220.22, respectively; and add a new § 220.18 to read as follows:

§ 220.18 Withholding payments.

In accordance with Departmental regulations at § 3016.43 and § 3019.62 of this title, the State agency shall withhold Program payments, in whole or in part, to any school food authority which has failed to comply with the provisions of this part. Program payments shall be withheld until the school food authority takes corrective action satisfactory to the State agency, or gives evidence that such corrective actions will be taken, or until the State agency terminates the grant in accordance with § 220.19. Subsequent to the State agency's acceptance of the corrective actions, payments will be released for any breakfasts served in accordance with the provisions of this part during the period the payments were withheld.

Dated: October 4, 2007.

Nancy Montanez Johner,

Under Secretary for Food, Nutrition and Consumer Services.

[FR Doc. E7–21420 Filed 10–30–07; 8:45 am]

BILLING CODE 3410–30–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Federal Credit Union Bylaws

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is issuing a rule reincorporating the Federal Credit Union (FCU) Bylaws into NCUA regulations. This change clarifies NCUA's ability to use a range of enforcement authorities, in appropriate cases, to enforce the FCU Bylaws. In addition, NCUA is adding a bylaw provision on director succession, an issue it has previously addressed in legal opinions, and is revising the introduction to the Bylaws to conform it to these changes.

DATES: This rule is effective November 30, 2007.

FOR FURTHER INFORMATION CONTACT: Elizabeth Wirick, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

On May 24, 2007, the Board issued a Notice and Request for comments on the proposed reincorporation of the Federal Credit Union Bylaws (proposal). 72 FR 30984 (June 5, 2007). The proposal also included bylaw provisions on director succession, an expedited approval process for bylaw amendments previously approved for other FCUs,

and revisions to the Introduction to the FCU Bylaws to reflect these changes. *Id.* On July 2, 2007, the Board extended the original comment period an additional two weeks. 72 FR 37122 (July 9, 2007).

NCUA is reincorporating the FCU Bylaws into NCUA regulations to clarify NCUA's authority to use a range of administrative actions to enforce bylaw violations in the rare cases where bylaw disputes cannot be resolved within an FCU. As discussed in the proposal, NCUA removed the Bylaws from its regulations in the 1980's. 72 FR 30984, 30985 (June 5, 2007). NCUA is concerned that the policy of requiring members to enforce rights granted in the Bylaws in state courts has resulted in members being unable to enforce rights granted in the Bylaws. The proposal limits NCUA intervention to cases where a fundamental, material member right is at issue and outlines a dispute resolution process.

The **Federal Register** requires the FCU Bylaws to be published as an Appendix to Part 701 rather than being incorporated by reference in the regulatory text. Accordingly, § 701.2 of the final rule has been revised from the proposal and specifically reincorporates the FCU Bylaws into NCUA's regulations as an Appendix.

B. Comments

General

NCUA received 32 comment letters in response to the proposal. Nine credit union members, nine state credit union leagues, eight federal credit unions, two national credit union trade organizations, one law firm, one consultant, and two other organizations submitted comments. Sixteen commenters supported reincorporating the Bylaws into NCUA regulations and 16 commenters opposed reincorporation. Both supporters and opponents of reincorporation sought changes to the revised Introduction to the FCU Bylaws, the standards for limiting NCUA's involvement, and the dispute resolution process. Many commenters also discussed the proposed bylaw provisions on director succession and the expedited approval process for certain bylaw amendments; the comments on these provisions overwhelmingly favored the proposal. Finally, several commenters asked NCUA to increase the cap on the number of members required to call a special meeting. The comments on each subject are discussed below.

Reincorporation of FCU Bylaws Into NCUA Regulation, Standards for NCUA Involvement, and Dispute Resolution Process

Most commenters opposing reincorporation cited concerns over increased regulation and oversight. The NCUA Board reiterates its position that reincorporating the Bylaws into NCUA's regulations imposes no new regulatory burden, as all FCUs are already required to have NCUA-approved bylaws. NCUA publishes form bylaw language and all FCUs have adopted some version of the form language. Further, as the preamble to the proposal stated, under the risk-based examination system in use for FCUs, examiners do not currently, nor will they once the Bylaws are incorporated in the regulations, inquire into an FCU's bylaws unless management raises the issue.

In contrast, commenters supporting reincorporation cited the lack of other realistic options for bylaw enforcement and the potential for credit union boards to violate bylaws with impunity. The most common theme was dissatisfaction with NCUA's policy of requiring members to enforce bylaws under state contract law. Commenters cited the expense and time required to bring suit as well as the possibility courts will find members lack standing to litigate bylaw disputes.

The commenters were split on the issue of whether NCUA needs to reincorporate the FCU Bylaws to clarify its ability to use its full range of enforcement actions.

Five commenters expressed the view that NCUA already has authority to use its full range of enforcement actions to enforce the Bylaws. Three commenters stated the FCU Act gives no authority to NCUA to enforce bylaw violations other than by charter suspension or revocation. Based on its analysis of the FCU Act, the Board concludes reincorporating the Bylaws is necessary to provide clear authority for NCUA to use its full range of enforcement actions for Bylaw violations.

NCUA does not agree with the commenters who assert its authority to enforce the Bylaws using the full range of administrative actions is clear under the current system. The FCU Act gives NCUA explicit authority to suspend or revoke the charter of any FCU, or place the FCU into involuntary liquidation, for a violation of any provision of its bylaws. 12 U.S.C. 1766(b)(1). A charter revocation or suspension, however, is a very extreme remedy and is unlikely to be an appropriate remedy for any bylaw violation. The resultant loss of credit union service would likely result in far more harm to members than the FCU's failure to follow its bylaws. The FCU Act also allows NCUA to place FCUs into conservatorship for reasons including protection of members' interests. 12 U.S.C. 1786(h)(1). Conservatorship, like charter suspension or liquidation, is an extreme remedy NCUA would prefer not to use if other enforcement options are available. The FCU Act, however, does not explicitly provide for such other options.

In contrast, the FCU Act explicitly provides NCUA authority to take other, less severe administrative actions for other types of violations. A cease and desist order, for example, identifies the violation, gives the credit union a deadline to come into compliance, and may prescribe procedures to come into compliance. NCUA may issue cease and desist orders for violations of ''a law, rule, or regulation.'' 12 U.S.C. 1786(e)(1). Before promulgating its proposed regulation, NCUA considered whether the authority to issue cease and desist orders extended to bylaw violations that did not also violate a statutory or regulatory requirement or pose a threat to the safety and soundness of the FCU. As discussed in the proposal, previous Board actions removed the Bylaws from NCUA regulations. 72 FR 30984, 30985 (June 5, 2007).

As a result, NCUA has concluded it should now reincorporate the Bylaws to give it clear authority to act if a bylaw violation threatens a fundamental, material credit union member right.

Some commenters suggested NCUA simply change its policy on enforcement of Bylaws violations not involving another violation or a safety and soundness threat without adopting a regulation. Agencies are entitled to change their positions, as long as they explain the new position and the reasons necessitating the change. *Motor Vehicle Manufacturers Ass'n* v. *State Farm Ins. Co.,* 463 U.S. 29, 41–42 (1983). Courts take a dim view of reversals of agency positions adopted without public notice, such as agency interpretations adopted in the course of litigation. *Bowen* v. *Georgetown University Hosp.*, 488 U.S. 204, 212 (1988). NCUA believes an abrupt reversal of prior policy, could leave any enforcement action taken for a Bylaw violation not involving an issue of safety and soundness or violations of other regulations vulnerable to challenge. Instead, the Board is using the rulemaking process to adopt its revised policy—which is actually a return to the Bylaws' original status as a regulation—to allow for public notice and input.

In summary, the FCU Act's explicit provisions for enforcing Bylaw violations include only limited and drastic options, and the Act's provisions for other, less severe remedies do not explicitly cover Bylaw violations. The Board has concluded that its authority in this area is not clear unless the Bylaws are again incorporated in NCUA regulations. Because the reincorporation of the Bylaws changes NCUA's most recent policy regarding Bylaws enforcement and returns the Bylaws to their original status as regulation, the Board is adopting the change using the rulemaking process.

One commenter who argued NCUA's existing authority would allow the use of the full range of actions for bylaw violations suggested that if, in fact, the Act provided authority only to liquidate or conserve FCUs for bylaw violations, NCUA could not create authority to use other actions by adopting the Bylaws as a regulation. Several other commenters generally questioned NCUA's authority to adopt this rule reincorporating the Bylaws. NCUA disagrees with these comments, as the FCU Act provides separate authority for it to adopt regulations. Section 120 of the FCU Act gives the NCUA Board broad, general authority to ''prescribe rules and regulations for the administration of [the FCU Act].'' 12 U.S.C. 1766. This authority is in no way limited by the separate authority to suspend or revoke an FCU's charter or place an FCU into conservatorship for failing to follow its bylaws. Moreover, several provisions of the FCU Act clearly contemplate that FCUs will follow their bylaws. The FCU Act's references to bylaws include the following requirements:

- FCUs must adopt bylaws prescribed by NCUA. 12 U.S.C. 1758.
- FCUs may impose late charges as permitted by their bylaws. 12 U.S.C. 1757(10).
- FCUs must hold their annual meetings at the time and place prescribed by their bylaws. 12 U.S.C. 1760.
- An FCU's bylaws must prescribe the number of and the procedures for electing directors, and may provide for a credit committee. 12 U.S.C. 1761; 1761c(a), (b).
- An FCU's bylaws must specify the number of board officers and identify the compensated officer, if any. 12 U.S.C. 1761a.
- An FCU's board of directors must follow bylaw provisions allowing for an elected or appointed credit committee, the appointment of loan officers, the hiring and compensation of officers and employees, the appointment of an executive committee, and information it is required to review at monthly meetings. 12 U.S.C. 1761b(4), (5), (10), (11), (13), (15).
- An FCU's supervisory committee may call a special meeting of the members to consider a bylaw violation. 12 U.S.C. 1761d.
- The amount to be refunded to expelled members is to be determined according to the bylaws. 12 U.S.C. 1764(c).
- Shares issued to minors are subject to conditions prescribed in the bylaws. 12 U.S.C. 1765.

The FCU Act provisions noted above require an FCU's bylaws to provide procedures and rules for an FCU's structure and operation, at the time of chartering and going forward. Under its general rulemaking authority NCUA is charged with administering the FCU Act. This authority is not restricted by the separate authority for charter revocation or suspension, or conservatorship, for bylaw violations. The FCU Act's many references to the FCU Bylaws demonstrate the Act requires FCUs to follow their bylaws. As the FCU Act allows NCUA authority to administer its provisions, and the FCU Act requires FCUs to have and follow bylaws, the NCUA Board finds reincorporating the FCU Bylaws into NCUA regulations will assist in its administration of the FCU Act.

Accordingly, the NCUA Board concludes reincorporating the Bylaws will clarify its authority without imposing any new regulatory burden on FCUs, and the final rule reincorporates the FCU Bylaws into NCUA regulations as an Appendix to Part 701.

Commenters were also split on whether the proposal adequately defined and limited the situations in which NCUA has discretion to take action. Seven commenters found the standard adequate or supported limiting NCUA intervention to disputes involving fundamental, material member rights, as described in the preamble to the proposal. Eight other commenters found the standard too broad and expressed concern NCUA would start to intervene in all bylaw disputes. The NCUA Board reiterates the agency will limit its involvement to bylaw disputes involving a fundamental, material credit union member right, including the right to: Maintain a share account; maintain credit union membership; have access to credit union facilities; participate in the director election process; attend annual and special meetings; and petition for removal of directors and committee members. The proposal added language to the Introduction to the Bylaws explaining NCUA's discretion to intervene in disputes involving fundamental, material credit union member rights; the final rule includes minor revisions to this language to further clarify the Board's intent.

The preamble to the proposal explained FCUs and FCU members should continue to attempt to resolve bylaw disputes within the credit union, and contact the regional office with jurisdiction for the FCU if a bylaw dispute cannot be resolved internally. 72 FR 30984, 30986 (June 5, 2007). Six commenters—both supporters and opponents of reincorporation—sought additional details regarding the resolution of bylaw disputes.

Four commenters requested additional information on the internal procedures FCUs and their members should use to resolve bylaw disputes. FCUs and FCU members should attempt to resolve bylaw disputes with the usual procedures for addressing member complaints, such as requesting review by the supervisory committee. Every FCU must have a supervisory committee, appointed from among its members. 12 U.S.C. 1761(b). One of the supervisory committee's roles is reviewing member complaints, and the Board believes the supervisory committee is well-suited to address bylaw disputes, since it has substantial experience in investigating and resolving member complaints.

Several commenters also raised questions about how NCUA will determine when to take an enforcement action related to a bylaw dispute. The NCUA Board reiterates NCUA's regional offices will analyze disputes to see if they affect a fundamental, material credit union member right. A determination that a fundamental, material member right may be affected allows NCUA the discretion to intervene, but does not require intervention. As noted previously in this preamble and in the preamble to the proposal, the Board's view is the agency will only become involved in bylaw disputes that involve fundamental, material credit union member rights. In considering whether to initiate formal administrative action, the agency will consider various factors, as it would with any regulatory violation, including the specific facts and circumstances in a case; alternatives, such as a supervisory letter; the willingness of the parties to cure a violation; and the seriousness of the violation.

Two commenters sought clarification about who may report bylaw disputes to NCUA. As is presently the case, any FCU member or FCU official may report a bylaw dispute within an FCU.

Likewise, any FCU, member, or official may report a bylaw dispute to NCUA.

One commenter asked if FCU members must seek to enforce an FCU's bylaws as a contract, in court, before requesting NCUA intervention. The preamble to the proposal noted FCU members still have the right to seek enforcement of the Bylaws in court. 72 FR 30984, 30985 (June 5, 2007). The NCUA Board clarifies FCU members do not need to seek judicial relief before reporting a bylaw dispute to NCUA.

Two commenters asked if regional directors' decisions on bylaw disputes may be appealed to the NCUA Board. The right to appeal a regional director's decision and to what forum will depend on the nature of the decision, namely, whether a regional director's decision involves formal administrative action. For example, if the agency takes formal administrative action by issuing an immediate cease and desist order directing an FCU to cease activity that violates the Bylaws or directing an FCU to undertake specific actions to cure a violation, then an FCU will have a right to challenge the order in federal court. 12 U.S.C. 1786(e), (f).

The preamble to the proposal stated NCUA's intent that FCUs and their members continue to attempt to resolve bylaw disputes internally. 72 FR 30984, 30986 (June 5, 2007). Several commenters asked for a similar statement to be added to the Introduction to the Bylaws or the text of § 701.2. The Board agrees this would be helpful and the final rule revises the Introduction accordingly.

Director Succession Amendments

The only changes the proposal made to the FCU Bylaws were amendments on director succession; the amendments essentially incorporated NCUA legal opinions. The proposal added a new Section to Article IX to clarify the supervisory committee's responsibilities if an FCU has no remaining directors. If an entire board of directors resigns, is removed simultaneously, or for whatever circumstance is unable to serve, the supervisory committee has the responsibility to act as a board of directors until the members elect new directors. The proposal also cross-references this new language in Article XVI, Section 3, addressing removal of directors by members, and Article VI, Section 4, addressing board of director vacancies.

Seven of eight commenters on this subject generally approved of the new language. Two commenters sought clarifications in the process and one of these commenters suggested alternative language for the amendment to Article IX. The commenter's alternative language would give the supervisory committee acting as the board the option of holding a special meeting to elect directors if the FCU's annual meeting is already scheduled or would usually occur within the next 45 days. The proposal had required the supervisory committee to serve as the board until the next annual meeting if the annual meeting were scheduled, or would usually occur, within the next 45 days. The final rule adopts the commenter's alternative, as NCUA agrees FCUs in this rare situation should have the option of formally electing directors as soon as possible, even if the next annual meeting will occur shortly.

In addition, the final rule includes certain grammatical changes to the proposal. The proposal used the term ''temporary board'' to refer to the supervisory committee acting as the board and ''interim board'' to refer to the new directors elected at the special meeting. A commenter's suggested alternative deletes the references to ''temporary'' and ''interim'' boards in Article IX, and instead uses the terms ''supervisory committee acting as the board'' and ''board.'' The NCUA Board finds these suggestions improve the bylaw and has adopted them.

The proposal prohibited the supervisory committee acting as the board from acting on policy matters. 72 FR 30984, 30987 (June 5, 2007). The intent of this prohibition was to ensure that an elected board makes decisions affecting the direction and future of an FCU. One commenter sought more explanation of permissible actions by the supervisory committee acting as the board, and another commenter requested the prohibition on acting on policy matters be modified to allow for policy action in exigent circumstances. Generally, the Board's view is the supervisory committee acting as the board should maintain the status quo and defer major decisions, such as opening new branches or launching new products, until the FCU's members elect a new board of directors. NCUA believes an exception for exigent circumstances is unnecessary given the short period of service that is likely and the fact that the limitation is only on policy matters. Also, an FCU where the supervisory committee is acting as the board will likely be in contact with its examiner and can seek advice on whether matters should be left to the elected board.

NCUA also clarifies that newly chartered FCUs and FCUs defined as ''troubled'' under § 701.14 of NCUA's regulations must follow the procedures under § 701.14 and notify NCUA of changes in their boards. NCUA recognizes these bylaw provisions may not afford sufficient time to notify NCUA 30 days before the effective date of the change in board members as required by § 701.14, but the supervisory committee acting as the board should notify the Regional Office of the change as soon as possible. The regulation also provides a waiver of the prior notice requirement for board members elected at a members' meeting, if the Regional Office receives notice within 48 hours of the election. 12 CFR 701.14(c)(2)(i). A newly chartered or troubled FCU that loses all its directors will likely be in contact with its examiner and can seek further advice on compliance with § 701.14.

The sole commenter opposing these provisions argued NCUA lacks authority to adopt them because they are inconsistent with the FCU Act's requirement for FCUs to be governed by a board of directors and for vacancies on the board to be filled by the remaining directors. NCUA believes the commenter misunderstood the proposal and its intent. The bylaw applies only in the rare circumstance of an FCU losing all its directors simultaneously and does not conflict with the FCU Act's requirement for director vacancies to be filled by other directors. The FCU Act is silent about how to proceed when an FCU has no remaining directors, leaving NCUA discretion to address this matter through regulation.

Expedited Approval Process for Previously Approved Bylaw Amendments

The proposed rule also outlined an expedited review process for bylaw amendments previously approved for other FCUs, which NCUA is adopting as proposed. NCUA will post the actual language of bylaw amendments approved since the last major revision of the FCU Bylaws in April 2006 on its website. Other FCUs seeking to adopt identical language will receive a response from NCUA's regional offices within 15 business days. All seven commenters on this topic endorsed the proposal.

One commenter also suggested NCUA post the language for all previously approved bylaw amendments that remain consistent with current NCUA guidance, not only amendments approved since April 2006. Because NCUA's Office of General Counsel staff has received only a handful of requests for bylaw amendment language predating the 2006 revisions, the Board has determined posting actual language for all bylaw amendments would not be the most productive use of staff resources. Further, FCUs seeking exact

language for an approved bylaw amendment that predates 2006 can access the Opinion Letters on NCUA's Web site and contact their regional office or the Office of General Counsel to obtain the exact language of any approved amendments.

Number of Members Required To Call a Special Meeting

Although the proposal did not explicitly ask for comments on the 750-member cap on the number of members required to call a special meeting, it noted the NCUA Board has decided it may consider individual FCUs' requests to increase this number through the bylaw amendment process outlined in the Introduction to the FCU Bylaws. 72 FR 30984, 30986 (June 5, 2007). Six of the eight commenters on this subject urged NCUA to adopt amendments to the FCU Bylaws increasing the cap to either a percentage of members, regardless of size, or a higher maximum number for larger credit unions. One commenter opposing an increase noted, although some increase in the cap may be appropriate for very large credit unions, setting the cap too high would disenfranchise members just as much as an FCU board ignoring the members' request for a special meeting.

The NCUA Board understands concerns some commenters expressed about the potential for a relatively small number of members to make disruptive requests for special meetings. NCUA also agrees with the commenter who expressed concern about the potential for disenfranchisement of FCU members resulting from a higher cap. The cap recently increased from 500 to 750 members. 71 FR 24551, 24554 (April 26, 2006). More time is needed to assess the appropriateness of this figure for large FCUs. Obtaining 750 signatures to request a special meeting is a significant undertaking, and NCUA is not aware of any actual instances since 2006 where members obtained this number of signatures to require a board of directors to hold a special meeting for a frivolous reason. NCUA repeats any necessary changes in this area should be handled through the bylaw amendment process explained in the introduction to the Bylaws. Any FCU requesting such an amendment should have documented, verifiable reasons why an increase in the cap is necessary, such as a history of members' abuse of the special meeting request process at that particular FCU.

C. Specific Changes to the FCU Bylaws

The Federal Credit Union Bylaws, as amended by this final rule, are reprinted in their entirety as Appendix A to Part 701. The final rule made very few changes to the text of the FCU Bylaws, and these changes are listed below.

(1) The following paragraph was added to the end of Section 3 of Article IX:

If all director positions become vacant simultaneously, the supervisory committee immediately assumes the role of the board of directors. The supervisory committee acting as the board must generally call and hold a special meeting to elect a board that will serve until the next annual meeting. The special meeting must occur at least 7 but no more than 14 days after all director positions became vacant, and candidates for the board at the special meeting may be nominated by petition or from the floor. However, if the next annual meeting has been scheduled and will occur within 45 days after all the director positions become vacant, the supervisory committee may decide to forego the special meeting and continue serving as the board until the election of new directors at the annual meeting.

If the next annual meeting has not been scheduled, but the month and day of the previous year's meeting plus 7 days falls within 45 days after all the director positions become vacant, the supervisory committee acting as the board may decide to forego the special meeting to elect new directors. In this case, the supervisory committee must schedule the annual meeting within 7 days before or after the month and day of the previous annual meeting and continue to serve as the board until directors are elected at the annual meeting.

The supervisory committee acting as the board may not act on policy matters. However, directors elected at a special meeting have the same powers as directors elected at the annual meeting.

(2) The following sentence was added to the end of Section 3 of Article XVI:

If member votes at a special meeting result in the removal of all directors, the supervisory committee immediately becomes the temporary board of directors and must follow the procedures in Article IX, Section 3.

(3) The following sentence was inserted after the first sentence of Section 4 of Article VI:

If all director positions become vacant simultaneously, the supervisory committee immediately becomes the temporary board of directors and must follow the procedures in Article IX, Section 3.

(4) The sixth paragraph of the Introduction was deleted and replaced with the following paragraph:

Federal credit unions considering an amendment may find it useful to review the bylaws section of the agency Web site, which includes Office of General Counsel opinions about proposed bylaw amendments. Opinions issued after April 2006 will include the language of approved amendments. Even if an amendment has been previously approved, the credit union must submit a proposed amendment to NCUA for review under the procedure listed above to ensure the amendment is identical. Credit unions requesting previously approved amendments will receive notice of the regional office's decision within 15 business days of the receipt of the request.

(5) The last paragraph of the Introduction was deleted and replaced with the following two paragraphs:

NCUA expects federal credit unions and their members will make every effort to resolve bylaw disputes using the credit union's internal member complaint resolution process. If a bylaw dispute cannot be resolved internally, however, credit union officials or members should contact the regional office with jurisdiction for the credit union for assistance in resolving the dispute.

NCUA has discretion to take administrative actions when a credit union is not in compliance with its bylaws. If a potential violation is identified, NCUA will carefully consider all of the facts and circumstances in deciding whether to take enforcement action. NCUA will not take action against minor or technical violations, but emphasizes that it retains discretion to enforce the bylaws in appropriate cases, such as safety and soundness concerns or threats to fundamental, material credit union member rights.

(6) The first paragraph of the Introduction was replaced with the following paragraph:

Effective Date: After consideration of public comment, the National Credit Union Administration (NCUA) Board adopted these Bylaws and incorporated them as Appendix A to Part 701 of NCUA's regulations on [date of final]. Unless a federal credit union has adopted bylaws before [date of final] it must adopt these revised Bylaws.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small credit unions, defined as those under ten million dollars in assets. This rule incorporates the Bylaws into NCUA's regulations

without imposing any regulatory burden, since the FCU Act requires FCUs to adopt NCUA-approved bylaws. The rule will not have a significant economic impact on a substantial number of small credit unions, and, therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

NCUA has determined the rule would not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget. 44 U.S.C. 3501 *et seq.*; 5 CFR part 1320.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The rule would not have substantial direct effects on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

NCUA has determined the rule would not affect family well-being within the meaning of § 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104–121 (SBREFA), provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the APA. 5 U.S.C. 551. The Office of Management and Budget has determined that this rule is not a major rule for purposes of SBREFA. As required by SBREFA, NCUA will file the appropriate reports with Congress and the General Accounting Office so that the final rule may be reviewed.

List of Subjects in 12 CFR Part 701

Credit unions.

By the National Credit Union Administration Board on October 25, 2007.

Mary F. Rupp,

Secretary of the Board.

■ Accordingly, NCUA amends 12 CFR part 701 as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

■ 1. The authority citation for part 701 is revised to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1758, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1786, 1787, 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*; 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

■ 2. Part 701 is amended by adding § 701.2 to read as follows:

§ 701.2 Federal credit union bylaws.

(a) Federal credit unions must operate in accordance with their approved bylaws. The Federal Credit Union Bylaws are hereby published as Appendix A to part 701 pursuant to 5 U.S.C. 552(a)(1) and accompanying regulations. Federal credit unions may adopt amendments to their bylaws as provided in the Bylaws, with the approval of the Board.

(b) Copies of the Federal Credit Union Bylaws may be obtained at *http://www.ncua.gov* or by request addressed to *ogc-mail@ncua.gov* or National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314.

(c) The National Credit Union Administration may issue revisions or amendments of the Federal Credit Union Bylaws from time to time. An historic file of amendments or revisions is maintained and made available for inspection at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314.

■ 3. Appendix A to 12 CFR Part 701 is added to read as follows:

Appendix A to Part 701—Federal Credit Union Bylaws

Introduction

A. Effective date. After consideration of public comment, the National Credit Union Administration (NCUA) Board adopted these Bylaws and incorporated them as Appendix A to Part 701 of NCUA's regulations on November 30, 2007. Unless a federal credit union has adopted bylaws before November 30, 2007, it must adopt these revised bylaws.

B. Adoption of all or part of these bylaws. Although federal credit unions may retain any previously approved version of the bylaws, the NCUA Board encourages federal credit unions to adopt the revised bylaws because it believes they provide greater clarity and flexibility for credit unions and their officials and members. Federal credit unions may also adopt portions of the revised bylaws and retain the remainder of previously approved bylaws, but the NCUA Board cautions federal credit unions to be extremely careful. Federal credit unions must be careful because they run the risk of having inconsistent or conflicting provisions because of the various options the revised bylaws provide as well as other revisions in the text.

C. Bylaw amendments. 1. The FCU Bylaws contain several provisions allowing FCU boards to select from an option or range of options and fill in a blank. Changes to ''fill-in-the-blank'' provisions are, in fact, changes to the FCU's bylaws and require a two-thirds vote of the board. As long as the FCU selects from the permissible options for completing the blank, the FCU need not submit the change for NCUA approval using the process outlined below.

2. Federal credit unions continue to have the flexibility to request other bylaw amendments if the need arises. NCUA must approve any bylaw amendments; federal credit unions may no longer adopt amendments from the ''Standard Bylaw Amendments'' booklet because the 1999 revisions to the bylaws included sufficient flexibility to make the separate list of standard bylaw amendments superfluous. Thus, NCUA no longer differentiates between ''standard'' and ''nonstandard'' bylaw amendments.

3. The procedure for approval of bylaw amendments is as follows:

a. The federal credit union wishing to adopt a bylaw amendment must file a request with its regional director.

b. The request must include the section of the bylaws to be amended; the reason for or purpose of the amendment, including an explanation of why the amendment is desirable and what it will accomplish for the credit union; and the specific, proposed wording of the amendment.

c. After review by the regional director and consultation within the agency, the regional director will advise the credit union if a proposed amendment is approved.

4. Federal credit unions considering an amendment may find it useful to review the bylaws section of the agency Web site, which includes Office of General Counsel opinions about proposed bylaw amendments. Opinions issued after April 2006 will include the

language of approved amendments. Even if an amendment has been previously approved, the credit union must submit a proposed amendment to NCUA for review under the procedure listed above to ensure the amendment is identical. Credit unions requesting previously approved amendments will receive notice of the regional office's decision within 15 business days of the receipt of the request.

D. The nature of the bylaws. 1. The Federal Credit Union Act requires the NCUA Board to prepare bylaws for federal credit unions. 12 U.S.C. 1758. The bylaws address a broad range of matters concerning a credit union's organization and governance, the relationship of the credit union to its members, and the procedures and rules a credit union follows. The bylaws supplement the broad provisions of: A federal credit union's charter, which establishes the existence of a federal credit union; the Federal Credit Union Act, which establishes the powers of federal credit unions; and NCUA regulations, which implement the Federal Credit Union Act. As a legal matter, a federal credit union's bylaws must conform to and cannot be inconsistent with any provision of its charter, the Federal Credit Union Act, NCUA regulations or other laws or regulations applicable to its operations.

2. NCUA expects federal credit unions and their members will make every effort to resolve bylaw disputes using the credit union's internal member complaint resolution process. If a bylaw dispute cannot be resolved internally, however, credit union officials or members should contact the regional office with jurisdiction for the credit union for assistance in resolving the dispute.

3. NCUA has discretion to take administrative actions when a credit union is not in compliance with its bylaws. If a potential violation is identified, NCUA will carefully consider all of the facts and circumstances in deciding whether to take enforcement action. NCUA will not take action against minor or technical violations, but emphasizes that it retains discretion to enforce the bylaws in appropriate cases, such as safety and soundness concerns or threats to fundamental, material credit union member rights.

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BYLAWS

Federal Credit Union, Charter No._____

(A corporation chartered under the laws of the United States)

Article I. Name—Purposes

Section 1. Name. The name of this credit union is as stated in Section 1 of the charter (approved organization certificate) of this credit union.

Section 2. Purposes. This credit union is a member-owned, democratically operated, not-for-profit organization managed by a volunteer board of directors, with the specified mission of meeting the credit and savings needs of consumers, especially persons of modest means. The purpose of this credit union is to promote thrift among its members by affording them an opportunity to accumulate their savings and to create for them a source of credit for provident or productive purposes. *The credit union may add business as one of its purposes by placing a comma after ''provident'' and inserting ''business.''*

Article II. Qualifications for Membership

Section 1. *Field of membership.* The field of membership of this credit union is limited to that stated in Section 5 of its charter.

Section 2. *Membership application procedures.* Applications for membership from persons eligible for membership under Section 5 of the charter must be signed by the applicant on forms approved by the board. The applicant is admitted to membership after approval of an application by a majority of the directors, a majority of the members of a duly authorized executive committee, or by a membership officer, and after subscription to at least one share of this credit union and the payment of the initial installment, and the payment of a uniform entrance fee if required by the board. If a person whose membership application is denied makes a written request, the credit union must explain the reasons for the denial in writing.

Section 3. *Maintenance of membership share required.* A member who withdraws all shareholdings or fails to comply with the time requirements for restoring his or her account balance to par value in Article III, Section 3, ceases to be a member. By resolution, the board may require persons readmitted to membership to pay another entrance fee.

Section 4. *Continuation of membership.* Once a member becomes a member that person may remain a member until the person or organization chooses to withdraw or is expelled in accordance with the Act and Article XIV of these bylaws. A member who is disruptive to credit union operations may be subject to limitations on services and access to credit union facilities. *A credit union that wishes to restrict services to members no longer within the field of membership should specify the restrictions in this section.*

Staff commentary on qualifications for membership:

Entrance fee—FCUs may not vary the entrance fee among different classes of members because the Act requires a uniform fee. FCUs may, however, eliminate the entrance fee for all applicants.

Article III. Shares of Members

Section 1. *Par value.* The par value of each share will be $_____. Subscriptions to shares are payable at the time of subscription, or in installments of at least $_____ per month.

Section 2. *Cap on shares held by one person.* The board may establish, by resolution, the maximum amount of shares that any one member may hold.

Section 3. *Time periods for payment and maintenance of membership share.* A member who fails to complete payment of one share within _____ of admission to membership, or within _____ from the increase in the par value of shares, or a member who reduces the share balance below the par value of one share and does not increase the balance to at least the par value of one share within _____ of the reduction will be terminated from membership.

Section 4. *Transferability.* Shares may only be transferred from one member to another by an instrument in a form as the board may prescribe. Shares that accrue credits for unpaid dividends retain those credits when transferred.

Section 5. *Withdrawals.* Money paid in on shares or installments of shares may be withdrawn as provided in these bylaws or regulation on any day when payment on shares may be made, provided, however, that

(a) The board has the right, at any time, to require members to give up to 60 days written notice of intention to withdraw the whole or any part of the amounts paid in by them.

(b) Reserved.

(c) No member may withdraw any shareholdings below the amount of the member's primary or contingent liability to the credit union if the member is delinquent as a borrower, or if borrowers for whom the member is comaker, endorser, or guarantor are delinquent, without the written approval of the credit committee or loan officer. Coverage of overdrafts under an overdraft protection policy does not constitute delinquency for purposes of this paragraph. Shares issued in an irrevocable trust as provided in Section 6 of this article are not subject to withdrawal restrictions except as stated in the trust agreement.

(d) The share account of a deceased member (other than one held in joint tenancy with another member) may be continued until the close of the dividend period in

which the administration of the deceased's estate is completed.

(e) The board will have the right, at any time, to impose a fee for excessive share withdrawals from regular share accounts. The number of withdrawals not subject to a fee and the amount of the fee will be established by board resolution and will be subject to regulations applicable to the advertising and disclosure of terms and conditions on member accounts.

Section 6. *Trusts.* Shares may be issued in a revocable or irrevocable trust, subject to the following:

When shares are issued in a revocable trust, the settlor must be a member of this credit union in his or her own right. When shares are issued in an irrevocable trust, either the settlor or the beneficiary must be a member of this credit union. The name of the beneficiary must be stated in both a revocable and irrevocable trust. For purposes of this section, shares issued pursuant to a pension plan authorized by the rules and regulations will be treated as an irrevocable trust unless otherwise indicated in the rules and regulations.

Section 7. *Joint accounts and membership requirements. Select one option and check the box corresponding to that option.*

__ *Option A—Separate account not required to establish membership*

Owners of a joint account may both be members of the credit union without opening separate accounts. For joint membership, both owners are required to fulfill all of the membership requirements including each member purchasing and maintaining at least one share in the account.

__ *Option B—Separate account required to establish membership*

Each member must purchase and maintain at least one share in a share account that names the member as the sole or primary owner. Being named as a joint owner of a joint account is insufficient to establish membership.

Staff commentary on shares:

i. Installments—FCUs may insert zero for the number of installments. The FCU Act allows membership upon the payment of the initial installment of a membership share, but NCUA no longer views this provision as requiring FCUs to offer the option of paying for the membership share in installments.

ii. Par value—FCUs may establish differing par values for different classes of members or types of accounts, provided this action does not violate any federal, state or local antidiscrimination laws. For example, an FCU may want to establish a higher par value for recent credit union members, without requiring long-time members to bring their accounts up to the new par value. A differing par value may also be permissible for different types of accounts, such as requiring a higher par value for a member with only a share draft account. If a credit union adopts differing par values, all of the possible par values should be stated in Section 1.

iii. Reduction in share balance below par value—When a member's account balance falls below the par value, Section 3 requires FCUs to allow members a minimum time period to restore their account balance to the par value before membership is terminated. FCUs may not delete this requirement or delete references to this requirement in Article II, Section 3.

Article IV. Meetings of Members

Section 1. *Annual meeting.* The annual meeting of the members must be held [insert time for annual meeting, for example, ''during the month of March/on the third Saturday of April/ no later than March 31''], in the county in which any office of the credit union is located or within a radius of 100 miles of an office, at the time and place as the board determines and announces in the notice of the annual meeting.

Section 2. *Notice of meetings required.* a. At least 30 but no more than 75 days before the date of any annual meeting or at least 7 days before the date of any special meeting of the members, the secretary must give written notice to each member. Notice may be by written notice delivered in person or by mail to the member's address, or, for members who have opted to receive statements and notices electronically, by electronic mail. Notice of the annual meeting may be given by posting the notice in a conspicuous place in the office of this credit union where it may be read by the members, at least 30 days before the meeting, if the annual meeting is to be held during the same month as that of the previous annual meeting and if this credit union maintains an office that is readily accessible to members where regular business hours are maintained. Any meeting of the members, whether annual or special, may be held without prior notice, at any place or time, if all the members entitled to vote, who are not present at the meeting, waive notice in writing, before, during, or after the meeting.

b. Notice of any special meeting must state the purpose for which it is to be held, and no business other than that related to this purpose may be transacted at the meeting.

Section 3. *Special meetings.* a. Special meetings of the members may be called by the chair or the board of directors upon a majority vote, or by the supervisory committee as provided in these bylaws. The chair must call a special meeting, meaning the meeting must be held, within 30 days of the receipt of a written request of 25 members or 5% of the members as of the date of the request, whichever number is larger. However, a request of no more than 750 members may be required to call a special meeting.

b. The notice of a special meeting must be given as provided in Section 2 of this article. Special meetings may be held at any location permitted for the annual meeting.

Section 4. *Items of business for annual meeting and rules of order for annual and special meetings.* The suggested order of business at annual meetings of members is—

(a) Ascertainment that a quorum is present.

(b) Reading and approval or correction of the minutes of the last meeting.

(c) Report of directors, if there is one. For credit unions participating in the Community Development Revolving Loan Program, the directors must report on the credit union's progress on providing needed community services, if required by NCUA Regulations.

(d) Report of the financial officer or the chief management official.

(e) Report of the credit committee, if there is one.

(f) Report of the supervisory committee, as required by Section 115 of the Act.

(g) Unfinished business.

(h) New business other than elections.

(i) Elections, as required by Section 111 of the Act.

(j) Adjournment.

k. To the extent consistent with these bylaws, all meetings of the members will be conducted according to _____. The order of business for the annual meeting may vary from the suggested order, provided it includes all required items and complies with the rules of procedure adopted by the credit union.

The credit union must fill in the blank with one of the following authorities, noting the edition to be used: Democratic Rules of Order, The Modern Rules of Order, Robert's Rules of Order, or Sturgis' Standard Code of Parliamentary Procedure.

Section 5. *Quorum.* Except as otherwise provided, 15 members constitute a quorum at annual or special meetings. If no quorum is present, an adjournment may be taken to a date at least 7 but not more than 14 days thereafter. The members present at any adjourned meeting will constitute a quorum, regardless of the number of members present. The same notice must be given for the adjourned meeting as is prescribed in Section 2 of this article for the original meeting, except that the notice must be given at least 5 days before the date of the meeting as fixed in the adjournment.

Article V. Elections

The Credit Union must select one of the four voting options. This may be done by printing the credit union's bylaws with the option selected or retaining this copy and checking the box of the option selected. All options continue with Section 3 of this article.

Option A1—In-Person Elections; Nominating Committee and Nominations From Floor

Section 1. *Nomination procedures.* At least 30 days before each annual meeting, the chair will appoint a nominating committee of three or more members. It is the duty of the nominating committee to nominate at least one member for each vacancy, including any unexpired term vacancy, for which elections are being held, and to determine that the members nominated are agreeable to the placing of their names in nomination and will accept office if elected.

Section 2. *Election procedures.* After the nominations of the nominating committee have been placed before the members, the chair calls for nominations from the floor. When nominations are closed, the chair appoints the tellers, ballots are distributed, the vote is taken and tallied by the tellers, and the results announced. All elections are determined by plurality vote and will be by ballot except where there is only one nominee for the office.

Option A2—In-Person Elections; Nominating Committee and Nominations by Petition

Section 1. *Nomination procedures.* a. At least 120 days before each annual meeting the chair will appoint a nominating

committee of three or more members. It is the duty of the nominating committee to nominate at least one member for each vacancy, including any unexpired term vacancy, for which elections are being held, and to determine that the members nominated are agreeable to the placing of their names in nomination and will accept office if elected.

b. The nominating committee files its nominations with the secretary of the credit union at least 90 days before the annual meeting, and the secretary notifies in writing all members eligible to vote at least 75 days before the annual meeting that nominations for vacancies may also be made by petition signed by 1% of the members with a minimum of 20 and a maximum of 500. The secretary may use electronic mail to notify members who have opted to receive notices or statements electronically.

c. The written notice must indicate that the election will not be conducted by ballot and there will be no nominations from the floor when the number of nominees equals the number of positions to be filled. A brief statement of qualifications and biographical data in a form approved by the board of directors will be included for each nominee submitted by the nominating committee with the written notice to all eligible members. Each nominee by petition must submit a similar statement of qualifications and biographical data with the petition. The written notice must state the closing date for receiving nominations by petition. In all cases, the period for receiving nominations by petition must extend at least 30 days from the date that the petition requirement and the list of nominating committee's nominees are mailed to all members. To be effective, nominations by petition must be accompanied by a signed certificate from the nominee or nominees stating that they are agreeable to nomination and will serve if elected to office. Nominations by petition must be filed with the secretary of the credit union at least 40 days before the annual meeting and the secretary will ensure that nominations by petition, along with those of the nominating committee, are posted in a conspicuous place in each credit union office at least 35 days before the annual meeting.

Section 2. *Election procedures.* a. All persons nominated by either the nominating committee or by petition must be placed before the members. When nominations are closed, the chair appoints the tellers, ballots are distributed, the vote is taken and tallied by the tellers, and the results announced. All elections are determined by plurality vote and will be by ballot except where there is only one nominee for each position to be filled.

b. If sufficient nominations are made by the nominating committee or by petition to provide at least as many nominees as positions to be filled, nominations cannot be made from the floor. In the event nominations from the floor are permitted and result in more nominees than positions to be filled, when nominations have been closed, the chair appoints the tellers, ballots are distributed, the vote is taken and tallied by the tellers, and the results announced. When the number of nominees equals the number of positions to be filled, the chair may take a voice vote or declare each nominee elected by general consent or acclamation at the annual meeting.

Option A3—Election by Ballot Boxes or Voting Machine; Nominating Committee and Nomination by Petition

Section 1. *Nomination procedures.* a. At least 120 days before each annual meeting, the chair will appoint a nominating committee of three or more members. It is the duty of the nominating committee to nominate at least one member for each vacancy, including any unexpired term vacancy, for which elections are being held, and to determine that the members nominated are agreeable to the placing of their names in nomination and will accept office if elected.

b. The nominating committee files its nominations with the secretary of the credit union at least 90 days before the annual meeting, and the secretary notifies in writing all members eligible to vote at least 75 days before the annual meeting that nominations for vacancies may also be made by petition signed by 1% of the members with a minimum of 20 and a maximum of 500. The secretary may use electronic mail to notify members who have opted to receive notices or statements electronically.

c. The written notice must indicate that the election will not be conducted by ballot and there will be no nominations from the floor when the number of nominees equals the number of positions to be filled. A brief statement of qualifications and biographical data in a form approved by the board of directors will be included for each nominee submitted by the nominating committee with the written notice to all eligible members. Each nominee by petition must submit a similar statement of qualifications and biographical data with the petition. The written notice must state the closing date for receiving nominations by petition. In all cases, the period for receiving nominations by petition must extend at least 30 days from the date of the petition requirement and the list of nominating committee's nominees are mailed to all members. To be effective, nominations by petition must be accompanied by a signed certificate from the nominee or nominees stating that they are agreeable to nomination and will serve if elected to office. Nominations by petition must be filed with the secretary of the credit union at least 40 days before the annual meeting and the secretary will ensure that nominations by petition along with those of the nominating committee are posted in a conspicuous place in each credit union office at least 35 days before the annual meeting.

Section 2. *Election procedures.* All elections are determined by plurality vote. The election will be conducted by ballot boxes or voting machines, subject to the following conditions:

(a) The board of directors will appoint the election tellers;

(b) If sufficient nominations are made by the nominating committee or by petition to provide more nominees than positions to be filled, the secretary, at least 10 days before the annual meeting, will cause ballot boxes and printed ballots, or voting machines, to be placed in conspicuous locations, as determined by the board of directors with the names of the candidates posted near the boxes or voting machines. The name of each candidate will be followed by a brief statement of qualifications and biographical data in a form approved by the board of directors;

(c) After the members have been given 24 hours to vote at conspicuous locations as determined by the board of directors, the ballot boxes or voting machines will be opened, the vote tallied by the tellers, the tallies placed in the ballot boxes, and the ballot boxes resealed. The tellers are responsible at all times for the ballot boxes or voting machines and the integrity of the vote. A record must be kept of all persons voting and the tellers must assure themselves that each person voting is entitled to vote; and

(d) The tellers will take the ballot boxes to the annual meeting. At the annual meeting, printed ballots will be distributed to those in attendance who have not voted and their votes will be deposited in the ballot boxes placed by the tellers, before the beginning of the meeting, in conspicuous locations with the names of the candidates posted near them. After those members have been given an opportunity to vote at the annual meeting, balloting will be closed, the ballot boxes opened, the vote tallied by the tellers and added to the previous count, and the chair will announce the result of the vote.

Option A4—Election by Electronic Device (Including But Not Limited To Telephone and Electronic Mail) or Mail Ballot; Nominating Committee and Nominations by Petition

Section 1. *Nomination procedures.* a. At least 120 days before each annual meeting, the chair will appoint a nominating committee of three or more members. It is the duty of the nominating committee to nominate at least one member for each vacancy, including any unexpired term vacancy, for which elections are being held, and to determine that the members nominated are agreeable to the placing of their names in nomination and will accept office if elected.

b. The nominating committee files its nominations with the secretary of the credit union at least 90 days before the annual meeting, and the secretary notifies in writing all members eligible to vote at least 75 days before the annual meeting that nominations for vacancies may also be made by petition signed by 1% of the members with a minimum of 20 and a maximum of 500. The secretary may use electronic mail to notify members who have opted to receive notices or statements electronically.

c. The notice must indicate that the election will not be conducted by ballot and there will be no nominations from the floor when the number of nominees equals the number of positions to be filled. A brief statement of qualifications and biographical data in a form approved by the board of directors will be included for each nominee submitted by the nominating committee with the notice to all eligible members. Each

nominee by petition must submit a similar statement of qualifications and biographical data with the petition. The notice must state the closing date for receiving nominations by petition. In all cases, the period for receiving nominations by petition must extend at least 30 days from the date of the petition requirement and the list of nominating committee's nominees are mailed to all members. To be effective, nominations by petition must be accompanied by a signed certificate from the nominee or nominees stating that they are agreeable to nomination and will serve if elected to office. Nominations by petition must be filed with the secretary of the credit union at least 40 days before the annual meeting and the secretary will ensure that nominations by petition, along with those of the nominating committee, are posted in a conspicuous place in each credit union office at least 35 days before the annual meeting.

Section 2. *Election procedures.* All elections are determined by plurality vote. All elections will be by electronic device or mail ballot, subject to the following conditions:

(a) The board of directors will appoint the election tellers;

(b) If sufficient nominations are made by the nominating committee or by petition to provide more nominees than positions to be filled, the secretary, at least 30 days before the annual meeting, will cause either a printed ballot or notice of ballot to be mailed to all members eligible to vote. Electronic mail may be used to provide the notice of ballot to members who have opted to receive notices or statements electronically;

(c) If the credit union is conducting its elections electronically, the secretary will cause the following materials to be transmitted to each eligible voter and the following procedures will be followed:

(1) One notice of balloting stating the names of the candidates for the board of directors and the candidates for other separately identified offices or committees. The name of each candidate must be followed by a brief statement of qualifications and biographical data in a form approved by the board of directors. Electronic mail may be used to provide the notice of ballot to members who have opted to receive notices or statements electronically.

(2) One mail ballot that conforms to Section 2(d) of this article and one instruction sheet stating specific instructions for the electronic election procedure, including how to access and use the system, and the period of time in which votes will be taken. The instruction will state that members without the requisite electronic device necessary to vote on the system may vote by submitting the enclosed mail ballot and specify the date the mail ballot must be received by the credit union. For members who have opted to receive notices or statements electronically, the mail ballot is not required and electronic mail may be used to provide the instructions for the electronic election procedure.

(3) It is the duty of the tellers of election to verify, or cause to be verified the name of the voter and the credit union account number as they are registered in the electronic balloting system. It is the duty of the teller to test the integrity of the balloting system at regular intervals during the election period.

(4) Ballots must be received no later than midnight, 5 calendar days before the annual meeting.

(5) The vote will be tallied by the tellers. The result must be verified at the annual meeting and the chair will make the result of the vote public at the annual meeting.

(6) In the event of malfunction of the electronic balloting system, the board of directors may in its discretion order elections be held by mail ballot only. The mail ballots must conform to Section 2(d) of this article and must be mailed once more to all eligible members 30 days before the annual meeting. The board may make reasonable adjustments to the voting time frames above, or postpone the annual meeting when necessary, to complete the elections before the annual meeting.

(d) If the credit union is conducting its election by mail ballot, the secretary will cause the following materials to be mailed to each member and the following procedures will be followed:

(1) One ballot, clearly identified as the ballot on which the names of the candidates for the board of directors and the candidates for other separately identified offices or committees are printed in random order. The name of each candidate will be followed by a brief statement of qualifications and biographical data in a form approved by the board of directors;

(2) One ballot envelope clearly marked with instructions that the completed ballot must be placed in that envelope and sealed;

(3) One identification form to be completed so as to include the name, address, signature and credit union account number of the voter;

(4) One mailing envelope in which the voter, following instructions provided with the mailing envelope, must insert the sealed ballot envelope and the identification form, and which must have postage prepaid and be preaddressed for return to the tellers;

(5) When properly designed with features that preserve the secrecy of the ballot, one form can be printed that represents a combined ballot and identification form, and postage prepaid and preaddressed return envelope;

(6) It is the duty of the tellers to verify, or cause to be verified, the name and credit union account number of the voter as appearing on the identification form; to place the verified identification form and the sealed ballot envelope in a place of safekeeping pending the count of the vote; in the case of a questionable or challenged identification form, to retain the identification form and sealed ballot envelope together until the verification or challenge has been resolved;

(7) Ballots mailed to the tellers must be received by the tellers no later than midnight 5 days before the date of the annual meeting;

(8) The vote will be tallied by the tellers. The result will be verified at the annual meeting and the chair will make the result of the vote public at the annual meeting.

All Options Continue Here

Section 3. *Order of nominations.* Nominations may be in the following order:

(a) Nominations for directors.

(b) Nominations for credit committee members, if applicable. Elections may be by separate ballots following the same order as the above nominations or, if preferred, may be by one ballot for all offices.

Section 4. *Proxy and agent voting.* Members cannot vote by proxy. A member other than a natural person may vote through an agent designated in writing for the purpose.

Section 5. *One vote per member.* Irrespective of the number of shares, no member has more than one vote.

Section 6. *Submission of information regarding credit union officials to NCUA.* The names and addresses of members of the board, board officers, executive committee, and members of the credit committee, if applicable, and supervisory committees must be forwarded to the Administration in accordance with the Act and regulations in the manner as may be required by the Administration.

Section 7. *Minimum age requirement.* Members must be at least __ years of age by the date of the meeting (or for appointed offices, the date of appointment) in order to vote at meetings of the members, hold elective or appointive office, sign nominating petitions, or sign petitions requesting special meetings.

The Credit Union's board should adopt a resolution inserting an age no greater than 18, or the age of majority under the state law applicable to the credit union, in the blank space.

The Credit Union may select the absentee ballot provision in conjunction with the voting procedure it has selected. This may be done by printing the credit union's bylaws with this provision or by retaining this copy and checking the box.

__ Section 8. *Absentee ballots.* The board of directors may authorize the use of absentee ballots in conjunction with the other procedures authorized in this article, subject to the following conditions:

(a) The board of directors will appoint the election tellers;

(b) If sufficient nominations are made by the nominating committee or by petition to provide more than one nominee for any position to be filled, the secretary, at least 30 days before the annual meeting, will cause printed ballots to be mailed to all members of the credit union who are eligible to vote and who have submitted a written or electronic request for an absentee ballot;

(c) The secretary will cause the following materials to be mailed to each eligible voter who has submitted a written or electronic request for an absentee ballot:

(1) One ballot, clearly identified as the ballot on which the names of the candidates for the board of directors and the candidates for other separately identified offices or committees are printed in random order. The name of each candidate will be followed by a brief statement of qualifications and biographical data in a form approved by the board of directors;

(2) One ballot envelope clearly marked with instructions that the completed ballot must be placed in that envelope and sealed;

(3) One identification form to be completed so as to include the name, address, signature and credit union account number of the voter;

(4) One mailing envelope in which the voter, pursuant to instructions provided with the envelope, must insert the sealed ballot envelope and the identification form, and which must have postage prepaid and be preaddressed for return to the tellers;

(5) When properly designed with features that preserve the secrecy of the ballot, one form can be printed that represents a combined ballot and identification form, and postage prepaid and preaddressed return envelope;

(d) It is the duty of the election tellers to verify, or cause to be verified, the name and credit union account number of the voter as appearing on the identification form; to place the verified identification and the sealed ballot envelope in a place of safekeeping pending the count of the vote; in the case of a questionable or challenged identification form, to retain the identification form and the sealed ballot envelope together until the verification or challenge has been resolved; and in the event that more than one voting procedure is used, to verify that no eligible voter has voted more than one time;

(e) Ballots mailed to the tellers must be received by the tellers no later than midnight 5 days before the date of the annual meeting;

(f) Absentee ballots will be deposited in the ballot boxes to be taken to the annual meeting or included in a precount in accordance with procedures specified in Article V, Section 2; and

(g) If a member has chosen to receive statements and notices electronically, the credit union may provide notices required in this section by email and provide instructions for voting via electronic means instead of mail ballots.

Staff commentary on the election process:

i. Eligibility Requirements: The Act and the FCU Bylaws contain the only eligibility requirements for membership on an FCU's board of directors, which are as follows:

(a) The individual must be a member of the FCU before distribution of ballots;

(b) the individual cannot have been convicted of a crime involving dishonesty or breach of trust unless the NCUA Board has waived the prohibition for the conviction; and

(c) the individual meets the minimum age requirement established under Article V, Section 7 of the FCU Bylaws.

Anyone meeting the three eligibility requirements may run for a seat on the board of directors if properly nominated. It is the nominating committee's duty to ascertain that all nominated candidates, including those nominated by petition, meet the eligibility requirements.

ii. Nomination Criteria for Nominating Committee: The FCU Act and the FCU Bylaws do not prohibit a board of directors from establishing reasonable criteria, in addition to the eligibility requirements, for a nominating committee to follow in making its nominations, such as financial experience, years of membership, or conflict of interest provisions. The board's nomination criteria, however, applies only to individuals nominated by the nominating committee; they cannot be imposed on individuals who meet the eligibility requirements and are properly nominated from the floor or by petition.

iii. Candidates' Names on Ballots: When producing an election ballot, the FCU's secretary may order the names of the candidates on the ballot using any method for selection provided it is random and used consistently from year to year so as to avoid manipulation or favoritism.

iv. Secret Ballots: An FCU must establish an election process that assures members their votes remain confidential and secret from all interested parties. If the election process does not separate the member's identity from the ballot, FCUs should use a third-party teller that has sole control over completed ballots. If the ballots are designed so that members' identities remain secret and are not disclosed on the ballot, FCUs may use election tellers from the FCU. In any case, FCU employees, officials, and members must not have access to ballots identifying members or to information that links members' votes to their identities.

v. Plurality Voting: At least one nominee must be nominated for each vacant seat. When there are more nominees than seats open for election, the nominees who receive the greatest number of votes are elected to the vacant seats.

vi. Minimum Age Requirement: The age the board selects may not be greater than the age of majority under the state law applicable to the credit union.

Article VI. Board of Directors

Section 1. *Number of members.* The board consists of _____members, all of whom must be members of this credit union. The number of directors may be changed to an odd number not fewer than 5 nor more than 15 by resolution of the board. No reduction in the number of directors may be made unless corresponding vacancies exist as a result of deaths, resignations, expiration of terms of office, or other actions provided by these bylaws. A copy of the resolution of the board covering any increase or decrease in the number of directors must be filed with the official copy of the bylaws of this credit union.

Section 2. C*omposition of board.* _____(Fill in the number, which may be zero) directors or committee members may be a paid employee of the credit union. _____(Fill in the number, which may be zero) immediate family members of a director or committee member may be a paid employee of the credit union. In no case may employees, family members, or employees and family members constitute a majority of the board. The board may appoint a management official who _____(may or may not) be a member of the board and one or more assistant management officials who _____(may or may not) be a member of the board. If the management official or assistant management official is permitted to serve on the board, he or she may not serve as the chair.

Section 3. *Terms of office.* Regular terms of office for directors must be for periods of either 2 or 3 years as the board determines. All regular terms must be for the same number of years and until the election and qualification of successors. Regular terms must be fixed at the first meeting, or upon any increase or decrease in the number of directors, so that approximately an equal number of regular terms must expire at each annual meeting.

Section 4. *Vacancies.* Any vacancy on the board, credit committee, if applicable, or supervisory committee will be filled as soon as possible by vote of a majority of the directors then holding office. If all director positions become vacant simultaneously, the supervisory committee immediately becomes the temporary board of directors and must follow the procedures in Article IX, Section 3. Directors and credit committee members appointed to fill a vacancy will hold office only until the next annual meeting, at which any unexpired terms will be filled by vote of the members, and until the qualification of their successors. Members of the supervisory committee appointed to fill a vacancy will hold office until the first regular meeting of the board following the next annual meeting of members, at which the regular term expires, and until the appointment and qualification of their successors.

Section 5. *Regular and special meetings.* A regular meeting of the board must be held each month at the time and place fixed by resolution of the board. One regular meeting each calendar year must be conducted in person. If a quorum is present in person for the annual in person meeting, the remaining board members may participate using audio or video teleconference methods. The other regular meetings may be conducted using audio or video teleconference methods. The chair, or in the chair's absence the ranking vice chair, may call a special meeting of the board at any time and must do so upon written request of a majority of the directors then holding office. Unless the board prescribes otherwise, the chair, or in the chair's absence the ranking vice chair, will fix the time and place of special meetings. Notice of all meetings will be given in the manner the board may from time to time by resolution prescribe. Special meetings may be conducted using audio or video teleconference methods.

Section 6. *Board responsibilities.* The board has the general direction and control of the affairs of this credit union and is responsible for performing all the duties customarily performed by boards of directors. This includes but is not limited to the following:

(a) Directing the affairs of the credit union in accordance with the Act, these bylaws, the rules and regulations and sound business practices.

(b) Establishing programs to achieve the purposes of this credit union as stated in Article I, Section 2, of these bylaws.

(c) Establishing a loan collection program and authorizing the chargeoff of uncollectible loans.

(d) Establishing a policy to address training for newly elected and incumbent directors and volunteer officials, in areas such as

ethics and fiduciary responsibility, regulatory compliance, and accounting and determining that all persons appointed or elected by this credit union to any position requiring the receipt, payment or custody of money or other property of this credit union, or in its custody or control as collateral or otherwise, are properly bonded in accordance with the Act and regulations.

(e) Performing additional acts and exercising additional powers as may be required or authorized by applicable law.

If the credit union has an elected credit committee, you do not need to check a box. If the credit union has no credit committee check Option 1 and if it has an appointed credit committee check Option 2.

__ *Option 1 No Credit Committee.*

(f) Reviewing denied loan applications of members who file written requests for review.

(g) Appointing one or more loan officers and delegating to those officers the power to approve or disapprove loans, lines of credit or advances from lines of credit.

(h) In its discretion, appointing a loan review committee to review loan denials and delegating to the committee the power to overturn denials of loan applications. The committee will function as a mid-level appeal committee for the board. Any denial of a loan by the committee must be reviewed by the board upon written request of the member. The committee must consist of three members and the regular term of office of the committee member will be for two years. Not more than one member of the committee may be appointed as a loan officer.

__ *Option 2. Appointed Credit Committee.*

(f) Appointing an odd number of credit committee members as provided in Article VIII of these bylaws.

Section 7. *Quorum.* A majority of the number of directors, including any vacant positions, constitutes a quorum for the transaction of business at any meeting, except that vacancies may be filled by a quorum consisting of a majority of the directors holding office as provided in Section 4 of this article. Fewer than a quorum may adjourn from time to time until a quorum is in attendance.

Section 8. *Attendance and removal.* a. If a director or a credit committee member, if applicable, fails to attend regular meetings of the board or credit committee, respectively, for 3 consecutive months, or 4 meetings within a calendar year, or otherwise fails to perform any of the duties as a director or a credit committee member, the office may be declared vacant by the board and the vacancy filled as provided in the bylaws.

b. The board may remove any board officer from office for failure to perform the duties thereof, after giving the officer reasonable notice and opportunity to be heard.

When any board officer, membership officer, executive committee member or investment committee member is absent, disqualified, or otherwise unable to perform the duties of the office, the board may by resolution designate another member of this credit union to fill the position temporarily. The board may also, by resolution, designate another member or members of this credit union to act on the credit committee when necessary in order to obtain a quorum.

Section 9. *Suspension of supervisory committee members.* Any member of the supervisory committee may be suspended by a majority vote of the board of directors. The members of this credit union will decide, at a special meeting held not fewer than 7 nor more than 14 days after any suspension, whether the suspended committee member will be removed from or restored to the supervisory committee.

Article VII. Board Officers, Management Officials and Executive Committee

Section 1. *Board officers.* The board officers of this credit union are comprised of a chair, one or more vice chairs, a financial officer, and a secretary, all of whom are elected by the board and from their number. The board determines the title and rank of each board officer and records them in the addendum to this article. One board officer, the _____, may be compensated for services as determined by the board. If more than one vice chair is elected, the board determines their rank as first vice chair, second vice chair, and so on. The offices of the financial officer and secretary may be held by the same person. If a management official or assistant management official is permitted to serve on the board, he or she may not serve as the chair. Unless removed as provided in these bylaws, the board officers elected at the first meeting of the board hold office until the first meeting of the board following the first annual meeting of the members and until the election and qualification of their respective successors.

Section 2. *Election and term of office.* Board officers elected at the meeting of the board next following the annual meeting of the members, which must be held not later than 7 days after the annual meeting, hold office for a term of 1 year and until the election and qualification of their respective successors: provided, however, that any person elected to fill a vacancy caused by the death, resignation, or removal of an officer is elected by the board to serve only for the unexpired term of that officer and until a successor is duly elected and qualified.

Section 3. *Duties of Chair.* The chair presides at all meetings of the members and at all meetings of the board, unless disqualified through suspension by the supervisory committee. The chair also performs other duties customarily assigned to the office of the chair or duties he or she is directed to perform by resolution of the board not inconsistent with the Act and regulations and these bylaws.

Section 4. *Approval required.* The board must approve all individuals who are authorized to sign all notes of this credit union and all checks, drafts and other orders for disbursement of credit union funds.

Section 5. *Vice chair.* The ranking vice chair has and may exercise all the powers, authority, and duties of the chair during the chair's absence or inability to act.

Section 6. *Duties of financial officer.* i. The financial officer manages this credit union under the control and direction of the board unless the board has appointed a management official to act as general manager. Subject to limitations, controls and delegations the board may impose, the financial officer will:

(a) Have custody of all funds, securities, valuable papers and other assets of this credit union.

(b) Provide and maintain full and complete records of all the assets and liabilities of this credit union in accordance with forms and procedures prescribed in regulations and other guidance approved by the Administration, including, for small credit unions, the Accounting Manual for Federal Credit Unions.

(c) Within 20 days after the close of each month, ensure that a financial statement showing the condition of this credit union as of the end of the month, including a summary of delinquent loans is prepared and submitted to the board and post a copy of the statement in a conspicuous place in the office of the credit union where it will remain until replaced by the financial statement for the next succeeding month.

(d) Ensure that financial and other reports the Administration may require are prepared and sent.

(e) Within standards and limitations prescribed by the board, employ tellers, clerks, bookkeepers, and other office employees, and have the power to remove these employees.

(f) Perform other duties customarily assigned to the office of the financial officer or duties he or she is directed to perform by resolution of the board not inconsistent with the Act, regulations and these bylaws.

ii. The board may employ one or more assistant financial officers, none of whom may also hold office as chair or vice chair, and may authorize them, under the direction of the financial officer, to perform any of the duties devolving on the financial officer, including the signing of checks. When designated by the board, any assistant financial officer may also act as financial officer during the financial officer's temporary absence or temporary inability to act.

Section 7. *Duties of management official and assistant management official.* The board may appoint a management official who is under the direction and control of the board or of the financial officer as determined by the board. The management official may be assigned any or all of the responsibilities of the financial officer described in Section 6 of this article. The board will determine the title and rank of each management official and record them in the addendum to this article. The board may employ one or more assistant management officials. The board may authorize assistant management officials under the direction of the management official, to perform any of the duties devolving on the management official, including the signing of checks. When designated by the board, any assistant management official may also act as management official during the management official's temporary absence or temporary inability to act.

Section 8. *Board powers regarding employees.* The board employs, fixes the compensation, and prescribes the duties of employees as necessary, and has the power to remove employees, unless it has delegated these powers to the financial officer or management official. Neither the board, the

financial officer, nor the management official has the power or duty to employ, prescribe the duties of, or remove necessary clerical and auditing assistance employed or used by the supervisory committee and, if there is a credit committee, the power or duty to employ, prescribe the duties of, or remove any loan officer appointed by the credit committee.

Section 9. *Duties of secretary.* The secretary prepares and maintains full and correct records of all meetings of the members and of the board, which records will be prepared within 7 days after the respective meetings. The secretary must promptly inform the Administration in writing of any change in the address of the office of this credit union or the location of its principal records. The secretary will give or cause to be given, in the manner prescribed in these bylaws, proper notice of all meetings of the members, and perform other duties he or she may be directed to perform by resolution of the board not inconsistent with the Act, regulations and these bylaws. The board may employ one or more assistant secretaries, none of whom may also hold office as chair, vice chair, or financial officer, and may authorize them under direction of the secretary to perform any of the duties assigned to the secretary.

Section 10. *Executive committee.* As authorized by the Act, the board may appoint an executive committee of not fewer than three directors to serve at its pleasure, to act for it with respect to the board's specifically delegated functions. When making delegations to the executive committee, the board must be specific with regard to the committee's authority and limitations related to the particular delegation. The board may also authorize any of the following to approve membership applications under conditions the board and these bylaws may prescribe: an executive committee; a membership officer(s) appointed by the board from the membership, other than a board member paid as an officer; the financial officer; any assistant to the paid officer of the board or to the financial officer; or any loan officer. No executive committee member or membership officer may be compensated as such.

Section 11. *Investment committee.* The board may appoint an investment committee composed of not less than two, to serve at its pleasure to have charge of making investments under rules and procedures established by the board. No member of the investment committee may be compensated as such. Addendum: The board must list the positions of the board officers and management officials of this credit union. They are as follows:

Select Option 1 if the credit union has a credit committee and Option 2 if it does not have a credit committee.

Article VIII. Option 1 Credit Committee

Section 1. *Credit committee members.* The credit committee consists of _____ members. All the members of the credit committee must be members of this credit union. The number of members of the credit committee must be an odd number and may be changed to not fewer than 3 nor more than 7 by resolution of the board. No reduction in the number of members may be made unless corresponding vacancies exist as a result of deaths, resignations, expiration of terms of office, or other actions provided by these bylaws. A copy of the resolution of the board covering any increase or decrease in the number of committee members must be filed with the official copy of the bylaws of this credit union.

Section 2. *Terms of office.* Regular terms of office for elected credit committee members are for periods of either 2 or 3 years as the board determines: provided, however, that all regular terms are for the same number of years and until the election and qualification of successors. The regular terms are fixed at the beginning, or upon any increase or decrease in the number of committee members, that approximately an equal number of regular terms expire at each annual meeting. Regular terms of office for appointed credit committee members are for periods as determined by the board and as noted in the board's minutes.

Section 3. *Officers of credit committee.* The credit committee chooses from their number a chair and a secretary. The secretary of the committee prepares and maintains full and correct records of all actions taken by it, and those records must be prepared within 3 days after the action. The offices of the chair and secretary may be held by the same person.

Section 4. *Credit committee powers.* The credit committee may, by majority vote of its members, appoint one or more loan officers to serve at its pleasure, and delegate to them the power to approve application for loans or lines of credit, share withdrawals, releases and substitutions of security, within limits specified by the committee and within limits of applicable law and regulations. Not more than one member of the committee may be appointed as a loan officer. Each loan officer must furnish to the committee a record of each approved or not approved transaction within 7 days of the date of the filing of the application or request, and this record becomes a part of the records of the committee. All applications or requests not approved by a loan officer must be acted upon by the committee. No individual may disburse funds of this credit union for any application or share withdrawal which the individual has approved as a loan officer.

Section 5. *Credit committee meetings.* The credit committee holds meetings as the business of this credit union may require, and not less frequently than once a month. Notice of meetings will be given to members of the committee in a manner as the committee may from time to time, by resolution, prescribe.

Section 6. *Credit committee duties.* For each loan or line of credit, the credit committee or loan officer must inquire into the character and financial condition of the applicant and the applicant's sureties, if any, to ascertain their ability to repay fully and promptly the obligations incurred by them and to determine whether the loan or line of credit will be of probable benefit to the borrower. The credit committee and its appointed loan officers should endeavor diligently to assist applicants in solving their financial problems.

Section 7. *Unapproved loans prohibited.* No loan or line of credit may be made unless approved by the committee or a loan officer in accordance with applicable law and regulations.

Section 8. *Lending procedures.* Subject to the limits imposed by applicable law and regulations, these bylaws, and the general policies of the board, the credit committee, or a loan officer, determines the security, if any, required for each application and the terms of repayment. The security furnished must be adequate in quality and character and consistent with sound lending practices. When funds are not available to make all the loans and lines of credit for which there are applications, preference should be given, in all cases, to the smaller applications if the need and credit factors are nearly equal.

Article VIII. Option 2 Loan Officers (No Credit Committee)

Section 1. *Records of loan officer; prohibition on loan officer disbursing funds.* Each loan officer must maintain a record of each approved or not approved transaction within 7 days of the filing of the application or request, and that record becomes a part of the records of the credit union. No individual may disburse funds of this credit union for any application or share withdrawal which the individual has approved as a loan officer.

Section 2. *Duties of loan officer.* For each loan or line of credit, the loan officer must inquire into the character and financial condition of the applicant and the applicant's sureties, if any, to ascertain their ability to repay fully and promptly the obligations incurred by them and to determine whether the loan or line of credit will be of probable benefit to the borrower. The loan officers should endeavor diligently to assist applicants in solving their financial problems.

Section 3. *Unapproved loans prohibited.* No loan or line of credit may be made unless approved by a loan officer in accordance with applicable law and regulations.

Section 4. *Lending procedures.* Subject to the limits imposed by law and regulations, these bylaws, and the general policies of the board, a loan officer determines the security if any required for each application and the terms of repayment. The security furnished must be adequate in quality and character and consistent with sound lending practices. When funds are not available to make all the loans and lines of credit for which there are applications, preference should be given, in all cases, to the applications for lesser amounts if the need and credit factors are nearly equal.

Article IX. Supervisory Committee

Section 1. *Appointment and membership.* The supervisory committee is appointed by the board from among the members of this credit union, one of whom may be a director other than the financial officer or the compensated officer of the board. The board determines the number of members on the committee, which may not be fewer than 3 nor more than 5. No member of the credit committee, if applicable, or any employee of this credit union may be appointed to the committee. Regular terms of committee

members are for periods of 1, 2, or 3 years as the board determines: Provided, however, that all regular terms are for the same number of years and until the appointment and qualification of successors. The regular terms are fixed at the beginning, or upon any increase or decrease in the number of committee members, so that approximately an equal number of regular terms expires at each annual meeting.

Section 2. *Officers of supervisory committee.* The supervisory committee members choose from among their number a chair and a secretary. The secretary of the supervisory committee prepares, maintains, and has custody of full and correct records of all actions taken by it. The offices of chair and secretary may be held by the same person.

Section 3. *Duties of supervisory committee.* a. The supervisory committee makes, or causes to be made, the audits, and prepares and submits the written reports required by the Act and regulations. The committee may employ and use clerical and auditing assistance required to carry out its responsibilities prescribed by this article, and may request the board to provide compensation for this assistance. It will prepare and forward to the Administration required reports.

b. If all director positions become vacant simultaneously, the supervisory committee immediately assumes the role of the board of directors. The supervisory committee acting as the board must generally call and hold a special meeting to elect a board that will serve until the next annual meeting. The special meeting must occur at least 7 but no more than 14 days after all director positions became vacant, and candidates for the board at the special meeting may be nominated by petition or from the floor. However, if the next annual meeting has been scheduled and will occur within 45 days after all the director positions become vacant, the supervisory committee may decide to forego the special meeting and continue serving as the board until the election of new directors at the annual meeting.

c. If the next annual meeting has not been scheduled, but the month and day of the previous year's meeting plus 7 days falls within 45 days after all the director positions become vacant, the supervisory committee acting as the board may decide to forego the special meeting to elect new directors. In this case, the supervisory committee must schedule the annual meeting within 7 days before or after the month and day of the previous annual meeting and continue to serve as the board until directors are elected at the annual meeting.

d. The supervisory committee acting as the board may not act on policy matters. However, directors elected at a special meeting have the same powers as directors elected at the annual meeting.

Section 4. *Verification of accounts.* The supervisory committee will cause the verification of the accounts of members with the records of the financial officer from time to time and not less frequently than as required by the Act and regulations. The committee must maintain a record of this verification.

Section 5. *Powers of supervisory committee—removal of directors and credit committee members.* By unanimous vote, the supervisory committee may suspend until the next meeting of the members any director, board officer, or member of the credit committee. In the event of any suspension, the supervisory committee must call a special meeting of the members to act on the suspension, which meeting must be held not fewer than 7 nor more than 14 days after the suspension. The chair of the committee acts as chair of the meeting unless the members select another person to act as chair.

Section 6. *Powers of supervisory committee—special meetings.* By the affirmative vote of a majority of its members, the supervisory committee may call a special meeting of the members to consider any violation of the provisions of the Act, the regulations, or of the charter or the bylaws of this credit union, or to consider any practice of this credit union which the committee deems to be unsafe or unauthorized.

Article X. Organization Meeting

Section 1. *Initial meeting.* When application is made for a federal credit union charter, the subscribers to the organization certificate must meet for the purpose of electing a board of directors and a credit committee, if applicable. Failure to commence operations within 60 days following receipt of the approved organization certificate is cause for revocation of the charter unless a request for an extension of time has been submitted to and approved by the Regional Director.

Section 2. *Election of directors and credit committee.* The subscribers elect a chair and a secretary for the meeting. The subscribers then elect from their number, or from those eligible to become members of this credit union, a board of directors and a credit committee, if applicable, all to hold office until the first annual meeting of the members and until the election and qualification of their respective successors. If not already a member, every person elected under this section or appointed under Section 3 of this article, must qualify within 30 days by becoming a member. If any person elected as a director or committee member or appointed as a supervisory committee member does not qualify as a member within 30 days of election or appointment, the office will automatically become vacant and be filled by the board.

Section 3. *Election of board officers.* Promptly following the elections held under the provisions of Section 2 of this article, the board must meet and elect the board officers who will hold office until the first meeting of the board of directors following the first annual meeting of the members and until the election and qualification of their respective successors. The board also appoints a supervisory committee at this meeting as provided in Article IX, Section 1, of these bylaws and a credit committee, if applicable. The members so appointed hold office until the first regular meeting of the board following the first annual meeting of the members and until the appointment and qualification of their respective successors.

Article XI. Loans and Lines of Credit to Members

Section 1. *Loan purposes.* Loans may only be made to members and for provident or productive purposes in accordance with applicable law and regulations.

The credit union may add business as one of its purposes by placing a comma after ''provident'' and inserting ''business.''

Section 2. *Delinquency.* Any member whose loan is delinquent may be required to pay a late charge as determined by the board of directors.

Article XII. Dividends

Section 1. *Power of board to declare dividends.* The board establishes dividend periods and declares dividends as permitted by the Act and applicable regulations.

Article XIII. RESERVED

Article XIV. Expulsion and Withdrawal

Section 1. *Expulsion procedure; expulsion or withdrawal does not affect members' liability or shares.* A member may be expelled by a two-thirds vote of the members present at special meeting called for that purpose, but only after the member has been given the opportunity to be heard. A member also may be expelled under a nonparticipation policy adopted by the board of directors and provided to each member in accordance with the Act. Expulsion or withdrawal will not operate to relieve a member of any liability to this credit union. All amounts paid in on shares by expelled or withdrawing members, before their expulsion or withdrawal, will be paid to them in the order of their withdrawal or expulsion, but only as funds become available and only after deducting any amounts due to this credit union.

Article XV. Minors

Section 1. *Minors permitted to own shares.* Shares may be issued in the name of a minor. State law governs the rights of minors to transact business with this credit union.

Article XVI. General

Section 1. *Compliance with law and regulation.* All power, authority, duties, and functions of the members, directors, officers, and employees of this credit union, pursuant to the provisions of these bylaws, must be exercised in strict conformity with the provisions of applicable law and regulations, and of the charter and the bylaws of this credit union.

Section 2. *Confidentiality.* The officers, directors, members of committees and employees of this credit union must hold in confidence all transactions of this credit union with its members and all information respecting their personal affairs, except when permitted by state or federal law.

Section 3. *Removal of directors and committee members.* Notwithstanding any other provisions in these bylaws, any director or committee member of this credit union may be removed from office by the affirmative vote of a majority of the members present at a special meeting called for the purpose, but only after an opportunity has been given to be heard. If member votes at a special meeting result in the removal of all

directors, the supervisory committee immediately becomes the temporary board of directors and must follow the procedures in Article IX, Section 3.

Section 4. *Conflicts of interest prohibited.* No director, committee member, officer, agent, or employee of this credit union may participate in any manner, directly or indirectly, in the deliberation upon or the determination of any question affecting his or her pecuniary or personal interest or the pecuniary interest of any corporation, partnership, or association (other than this credit union) in which he or she is directly or indirectly interested. In the event of the disqualification of any director respecting any matter presented to the board for deliberation or determination, that director must withdraw from the deliberation or determination; and if the remaining qualified directors present at the meeting plus the disqualified director or directors constitute a quorum, the remaining qualified directors may exercise with respect to this matter, by majority vote, all the powers of the board. In the event of the disqualification of any member of the credit committee, if applicable, or the supervisory committee, that committee member must withdraw from the deliberation or determination.

Section 5. *Records.* Copies of the organization certificate of this credit union, its bylaws and any amendments to the bylaws, and any special authorizations by the Administration must be preserved in a place of safekeeping. Copies of the organization certificate and field of membership amendments should be attached as an appendix to these bylaws. Returns of nominations and elections and proceedings of all regular and special meetings of the members and directors must be recorded in the minute books of this credit union. The minutes of the meetings of the members, the board, and the committees must be signed by their respective chairmen or presiding officers and by the persons who serve as secretaries of those meetings.

Section 6. *Availability of credit union records.* All books of account and other records of this credit union must be available at all times to the directors and committee members of this credit union provided they have a proper purpose for obtaining the records. The charter and bylaws of this credit union must be made available for inspection by any member and, if the member requests a copy, it will be provided for a reasonable fee.

Section 7. *Member contact information.* Members must keep the credit union informed of their current address.

Section 8. *Indemnification.* (a) The credit union may elect to indemnify to the extent authorized by (check one)

[ ] law of the state of _____:

[ ] Model Business Corporation Act:

the following individuals from any liability asserted against them and expenses reasonably incurred by them in connection with judicial or administrative proceedings to which they are or may become parties by reason of the performance of their official duties (check as appropriate).

[ ] current officials

[ ] former officials

[ ] current employees

[ ] former employees

(b) The credit union may purchase and maintain insurance on behalf of the individuals indicated in (a) above against any liability asserted against them and expenses reasonably incurred by them in their official capacities and arising out of the performance of their official duties to the extent such insurance is permitted by the applicable state law or the Model Business Corporation Act.

(c) The term ''official'' in this bylaw means a person who is a member of the board of directors, credit committee, supervisory committee, other volunteer committee (including elected or appointed loan officers or membership officers), established by the board of directors.

Article XVII. Amendments of Bylaws and Charter

Section 1. *Amendment procedures.* Amendments of these bylaws may be adopted and amendments of the charter requested by the affirmative vote of two-thirds of the authorized number of members of the board at any duly held meeting of the board if the members of the board have been given prior written notice of the meeting and the notice has contained a copy of the proposed amendment or amendments. No amendment of these bylaws or of the charter may become effective, however, until approved in writing by the NCUA Board.

Article XVIII. Definitions

Section 1. *General definitions.* When used in these bylaws the terms:

''Act'' means the Federal Credit Union Act, as amended.

''Administration'' means the National Credit Union Administration.

''Applicable law and regulations'' means the Federal Credit Union Act and rules and regulations issued thereunder or other applicable federal and state statutes and rules and regulations issued thereunder as the context indicates (such as The Higher Education Act of 1965).

''Board'' means board of directors of the federal credit union.

''Immediate family member'' means spouse, child, sibling, parent, grandparent, grandchild, stepparents, stepchildren, stepsiblings, and adoptive relationships.

''NCUA Board'' means the Board of the National Credit Union Administration.

''Regulation'' or ''regulations'' means rules and regulations issued by the NCUA Board.

''Share'' or ''shares'' means all classes of shares and share certificates that may be held in accordance with applicable law and regulations.

[FR Doc. E7–21397 Filed 10–30–07; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–28591; Airspace Docket No. 07–ASO–16]

Amendment of Class E Airspace; Scottsboro, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Scottsboro, AL, to accommodate a new Standard Instrument Approach Procedure (SIAP) that has been developed for Scottsboro Municipal—Word Field Airport. Additional controlled airspace is necessary for the safety and management of Instrument Flight Rules (IFR) operations at Scottsboro Municipal—Word Field Airport.

DATES: *Effective Date:* 0901 UTC, December 20, 2007. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Mark. D. Ward, Manager, System Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

On August 15, 2007, the FAA proposed to amend Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace at Scottsboro, AL, (72 FR 45700). This action provides adequate Class E airspace for IFR operations at Scottsboro Municipal—Word Field Airport, Scottsboro, AL. Designations for Class E airspace areas extending upward from 700 feet or more above the surface of the Earth are published in FAA Order 7400.9R, dated August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR part 71.1. The Class E designations listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends Class E airspace at Scottsboro, AL, to provide additional controlled airspace required to support new Area Navigation (RNAV) Global Positioning System (GPS) Runway (RWY) 4 and RWY 22 SIAP at Scottsboro Municipal—Word Field Airport.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9R, Airspace Designations and Reporting Points, dated August 15, 2007, and effective September 15, 2007, is amended as follows:

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

* * * * *

ASO AL E5 Scottsboro, AL [Revised]

Scottsboro Municipal—Word Field Airport, AL
(Lat. 34°41′19″ N., long. 86°00′21″ W)

Jackson County Hospital, Point in Space Coordinates
(Lat. 34°39′47″ N, long. 86°01′54″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Scottsboro Municipal—Word Field Airport and within 4 miles each side of the 037° bearing from Scottsboro Municipal—Word Field Airport extending from the 6.5-mile radius to 10.9 miles northeast of the airport and within 4 miles each side of the 218° bearing from the Scottsboro Municipal—Word Field Airport extending from the 6.5-mile radius to 11 miles Southwest of the airport; and that airspace within a 6-mile radius of the point in space (lat. 34°39′47″ N, long. 86°01′54″ W) serving Jackson County Hospital.

* * * * *

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

Lynda Otting,

Acting Manager, System Support Group, Eastern Service Center.

[FR Doc. 07–5353 Filed 10–30–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30576; Amdt. No. 3241]

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 October 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 October 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 October 19, 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 20 Dec 2007

Andalusia/Opp, AL, South Alabama Rgnl at Bill Benton Field, RNAV (GPS) RWY 11, Amdt 1A
Andalusia/Opp, AL, South Alabama Rgnl at Bill Benton Field, RNAV (GPS) RWY 29, Amdt 1B
Centreville, AL, Bibb County, RNAV (GPS) RWY 10, Orig
Centreville, AL, Bibb County, RNAV (GPS) RWY 28, Orig
Centreville, AL, Bibb County, Takeoff Minimums and Obstacle DP, Orig
Clayton, AL, Clayton Municipal, RNAV (GPS) RWY 27, Orig
Clayton, AL, Clayton Municipal, VOR/DME RWY 27, Amdt 2
Eufaula, AL, Weedon Field, RNAV (GPS) RWY 18, Orig
Eufaula, AL, Weedon Field, RNAV (GPS) RWY 36, Orig
Eufaula, AL, Weedon Field, VOR RWY 18, Amdt 8
Eufaula, AL, Weedon Field, VOR/DME RWY 36, Amdt 3
Monroeville, AL, Monroe County, RNAV (GPS) RWY 3, Orig
Monroeville, AL, Monroe County, RNAV (GPS) RWY 21, Orig
Monroeville, AL, Monroe County, VOR RWY 3, Amdt 9
Monroeville, AL, Monroe County, VOR RWY 21, Amdt 9
Monroeville, AL, Monroe County, Takeoff Minimums and Obstacle DP, Orig
Tuscaloosa, AL, Tuscaloosa Regional, Takeoff Minimums and Obstacle DP, Amdt 2
Byron, CA, Byron, RNAV (GPS) RWY 30, Orig-A
Sandersville, GA, Kaolin Field, RNAV (GPS) RWY 12, Amdt 1
Sandersville, GA, Kaolin Field, RNAV (GPS) RWY 30, Amdt 1
Sandersville, GA, Kaolin Field, NDB RWY 12, Amdt 1
Sandersville, GA, Kaolin Field, VOR/DME–A, Amdt 6
Vidalia, GA, Vidalia Regional, ILS OR LOC/NDB RWY 24, Amdt 1
Vidalia, GA, Vidalia Regional, Takeoff Minimums and Obstacle DP, Orig
Chicago, IL, Lansing Muni, RNAV (GPS) RWY 36, Orig
Chicago, IL, Lansing Muni, LOC RWY 36, Orig
Chicago/West Chicago, IL, Dupage, RNAV (GPS) RWY 20R, Orig
Chicago/West Chicago, IL, Dupage, Takeoff Minimums and Obstacle DP, Orig
Lafayette, IN, Purdue University, VOR–A, Amdt 26
Prestonburg, KY, Big Sandy Regional, RNAV (GPS) RWY 21, Amdt 1A
Bad Axe, MI, Huron County Memorial, RNAV (GPS) RWY 4, Orig
Bad Axe, MI, Huron County Memorial, RNAV (GPS) RWY 22, Orig
Bad Axe, MI, Huron County Memorial, VOR RWY 4, Amdt 11
Bad Axe, MI, Huron County Memorial, VOR RWY 22, Amdt 10
Bad Axe, MI, Huron County Memorial, Takeoff Minimums and Obstacle DP, Amdt 4
Detroit, MI, Willow Run, Takeoff Minimums and Obstacle DP, Amdt 9
Natchez, MS, Hardy-Anders Fld Natchez-Adams County, ILS OR LOC RWY 13, Amdt 1
Natchez, MS, Hardy-Anders Fld Natchez-Adams County, RNAV (GPS) RWY 13, Orig
Natchez, MS, Hardy-Anders Fld Natchez-Adams County, RNAV (GPS) RWY 18, Orig
Natchez, MS, Hardy-Anders Fld Natchez-Adams County, RNAV (GPS) RWY 31, Orig
Natchez, MS, Hardy-Anders Fld Natchez-Adams County, RNAV (GPS) RWY 36, Orig
Natchez, MS, Hardy-Anders Fld Natchez-Adams County, VOR/DME RWY 13, Amdt 3
Natchez, MS, Hardy-Anders Fld Natchez-Adams County, NDB OR GPS RWY 18, Amdt 4C, CANCELLED
Natchez, MS, Hardy-Anders Fld Natchez-Adams County, Takeoff Minimums and Obstacle DP, Orig
Rutherfordton, NC, Rutherford Co/Marchman Field, RNAV (GPS) RWY 1, Orig
Rutherfordton, NC, Rutherford Co/Marchman Field, LOC RWY 1, Amdt 2
Rutherfordton, NC, Rutherford Co/Marchman Field, GPS RWY 1, Amdt 1, CANCELLED

Rutherfordton, NC, Rutherford Co/Marchman Field, Takeoff Minimums and Obstacle DP, Amdt 2
Reno, NV, Reno/Tahoe Intl, Takeoff Minimums and Obstacle DP, Amdt 4
Dayton, OH, Greene County-Lewis A Jackson Regional, RNAV (GPS) RWY 7, Orig-A
Dayton, OH, Greene County-Lewis A Jackson Regional, RNAV (GPS) RWY 25, Orig-A
Kent, OH, Kent State Univ, RNAV (GPS) RWY 1, Amdt 1A
Kent, OH, Kent State Univ, RNAV (GPS) RWY 19, Amdt 1A
Mount Joy/Marietta, PA, Donegal Springs Airpark, RNAV (GPS) RWY 28, Orig
Mount Joy/Marietta, PA, Donegal Springs Airpark, VOR RWY 28, Amdt 1
Mount Joy/Marietta, PA, Donegal Springs Airpark, Takeoff Minimums and Obstacle DP, Amdt 2
Pottstown, PA, Pottstown Muni, Takeoff Minimums and Obstacle DP, Amdt 2
Shelbyville, TN, Bomar Field-Shelbyville Muni, VOR/DME RWY 18, Amdt 5
Trenton, TN, Gibson County, NDB OR GPS RWY 19, Amdt 4, CANCELLED
Abilene, TX, Abilene Regional, Takeoff Minimums and Obstacle DP, Amdt 2
Richmond/Ashland, VA, Hanover County Muni, LOC RWY 16, Amdt 3
Seattle, WA, Seattle-Tacoma Intl, VOR/DME RWY 34C, Orig
Seattle, WA, Seattle-Tacoma Intl, VOR RWY 34C/R, Amdt 9C, CANCELLED
Jackson, WY, Jackson Hole, ILS OR LOC Y RWY 19, Orig
Jackson, WY, Jackson Hole, ILS OR LOC RWY 19, Amdt 9, CANCELLED

Effective 14 Feb 2008

Detroit, MI, Willow Run, RNAV (GPS) RWY 32, Orig, CANCELLED
Philadelphia, PA, Northeast Philadelphia, Takeoff Minimums and Obstacle DP, Orig

The FAA published the following Amendment in Docket No. 30574 Amdt. No. 3239 to Part 97 of the Federal Aviation Regulations (Vol. 72, FR No. 199, Page 58510, dated October 16, 2007) under Section 97.23 effective 22 November 2007, that is currently published and is hereby rescinded as effective for 22 November 2007:

Hyannis, MA, Barnstable Muni-Boardman/Polando Field, VOR RWY 6, Amdt 9

[FR Doc. E7–21134 Filed 10–30–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 748

[Docket No. 070817469–7596–01]

RIN 0694–AE11

Approved End-Users and Respective Eligible Items for the People's Republic of China (PRC) Under Authorization Validated End-User (VEU); Correction

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) amended the Export Administration Regulations (EAR) to list names of end-users in the People's Republic of China (PRC) approved to receive exports, reexports and transfers of certain items under Authorization Validated End-User (VEU). The rule identified five specific validated end-users. This final rule amends the EAR to correct an inadvertent omission in the list of items approved for one of those validated end-users.

DATES: This rule is effective October 31, 2007. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

ADDRESSES: You may submit comments, identified by RIN 0694–AE11 (VEU), by any of the following methods:

E-mail: publiccomments@bis.doc.gov Include ''RIN 0694–AE11 (VEU)'' in the subject line of the message.

Fax: (202) 482–3355. Please alert the Regulatory Policy Division, by calling (202) 482–2440, if you are faxing comments.

Mail or Hand Delivery/Courier: Sheila Quarterman, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, Attn: RIN 0694–AE11 (VEU).

Send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to David Rostker, Office of Management and Budget (OMB), by e-mail to *David_Rostker@omb.eop.gov*, or by fax to (202) 395–7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044. Comments on this collection of information should be submitted separately from comments on the final rule (*i.e.* RIN 0694–AE11 (VEU))—all comments on the latter should be submitted by one of the three methods outlined above.

FOR FURTHER INFORMATION CONTACT: Michael Rithmire, Chairman, End-User Review Committee, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044; by telephone (202) 482–6105; or by e-mail to *mrithmir@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

Authorization Validated End-User (VEU): Initial List of Approved End-Users, Eligible Items and Destinations: Correction of the List of Eligible Items

Created in a final rule on June 19, 2007 (72 FR 33646), Authorization Validated End-User (VEU) is for approved end-users located in eligible destinations to which eligible items (commodities, software and technology, except those controlled for missile technology or crime control reasons) may be exported, reexported or transferred without a license, in conformance with Section 748.15 of the EAR. As established in the June 19 rule, the PRC is the initial destination eligible for exports, reexports and transfers under Authorization VEU.

Authorization VEU is a mechanism to facilitate increased high-technology exports to companies in the PRC that have a record of using such items responsibly. VEUs will be able to obtain eligible items that are on the Commerce Control List without having to wait for their suppliers to obtain export licenses from BIS. A wide range of items are eligible for Authorization VEU. In addition, Authorization VEU may be used by foreign reexporters, and does not have an expiration date.

BIS amended Supplement No. 7 to Part 748 of the EAR to identify five companies with 14 eligible facilities in the PRC as VEUs and to identify the items that may be exported, reexported, or transferred to them in a final rule published in the **Federal Register** on Friday, October 19, 2007 (72 FR 59164). Also see a related **Federal Register** publication on Wednesday, October 24, 2007 (72 FR 60408). The VEUs listed in Supplement No. 7 to Part 748 were reviewed and approved by the U.S. Government in accordance with the provisions of Section 748.15 and Supplement Nos. 8 and 9 to Part 748 of the EAR. The October 19th rule should have listed items controlled under Export Control Classification Numbers (ECCNs) 3A001.a.5.a.5. and 3A001.a.5.b. in the ''Eligible Items (By ECCN)'' column of Supplement No. 7 to Part 748 of the EAR for validated end-user National Semiconductor Corporation in the PRC. This final rule amends the EAR to correct that inadvertent omission in the list of items in Supplement No. 7 to Part 748 of the EAR approved for National Semiconductor Corporation in the PRC.

Since August 21, 2001, the Export Administration Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp, p. 783 (2002)), as extended

most recently by the Notice of August 15, 2007 (72 FR 46137, August 16, 2007), has continued the EAR in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

Rulemaking

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

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by the OMB under control number 0694–0088, ''Multi-Purpose Application'', which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748; and for recordkeeping, reporting and review requirements in connection with Authorization Validated End-User, which carries an estimated burden of 30 minutes per submission. This rule is expected to result in a decrease in license applications submitted to BIS. Total burden hours associated with the Paperwork Reduction Act and Office and Management and Budget control number 0694–0088 are not expected to increase significantly as a result of this rule.

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

4. The provisions of the Administrative Procedure Act requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Sheila Quarterman, Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Part 748

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

■ Accordingly, part 748 of the Export Administration Regulations (15 CFR parts 730–799) is amended as follows:

PART 748—[AMENDED]

■ 1. The authority citation for 15 CFR part 748 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006); Notice of August 15, 2007, 72 FR 46137 (August 16, 2007).

■ 2. Supplement No. 7 to part 748 is amended to correct the entry for National Semiconductor Corporation to read as follows:

Supplement No. 7 to Part 748—Authorization Validated End-User (VEU): List of Validated End-Users, Respective Items Eligible for Export, Reexport and Transfer, and Eligible Destinations

Validated end-user	Eligible items (by ECCN)	Eligible destination
* *	* * *	* *
National Semiconductor Corporation	3A001.a.5.a.1; 3A001.a.5.a.2; 3A001.a.5.a.3; 3A001.a.5.a.4; 3A001.a.5.a.5; 3A001.a.5.b.	National Semiconductor Hong Kong Limited, Beijing Representative Office, Room 604, CN Resources Building, No. 8 Jianggumenbei A, Beijing, China 100005. National Semiconductor Hong Kong Limited, Shanghai Representative Office, Room 903–905 Central Plaza, No. 227 Huangpi Road North, Shanghai, China 200003. National Semiconductor Hong Kong Limited, Shenzhen Representative Office, Room 1709 Di Wang Commercial Centre, Shung Hing Square, 5002 Shenna Road East, Shenzhen, China 518008.

* * * * *

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. E7–21465 Filed 10–30–07; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 538

Sudanese Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Foreign Assets Control of the U.S. Department of the Treasury is amending the Sudanese Sanctions Regulations, 31 CFR part 538, to include several new provisions implementing Executive Order 13412 of October 13, 2006.

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

FOR FURTHER INFORMATION CONTACT: Assistant Director for Compliance Outreach & Implementation, tel.: 202/622–2490, Assistant Director for Licensing, tel.: 202/622–2480, Assistant Director for Policy, tel.: 202/622–4855, Office of Foreign Assets Control, or

Chief Counsel (Foreign Assets Control), tel.: 202/622–2410, Office of the General Counsel, Department of the Treasury, Washington, DC 20220 (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning the Office of Foreign Assets Control are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on demand service, tel.: (202) 622–0077.

Background

The Sudanese Sanctions Regulations, 31 CFR part 538 (the ''SSR''), were promulgated to implement Executive Order 13067 of November 3, 1997 (''E.O. 13067''), in which the President declared a national emergency with respect to the policies and actions of the Government of Sudan. To deal with that emergency, E.O. 13067 imposed comprehensive trade sanctions with respect to Sudan and blocked all property and interests in property of the Government of Sudan in the United States or within the possession or control of United States persons.

On October 13, 2006, the President signed into law the Darfur Peace and Accountability Act of 2006 (the ''DPAA''), which, among other things, calls for support of the regional government of Southern Sudan, assistance with the peace efforts in Darfur, and provision of economic assistance in specified areas of Sudan. In particular, section 7 of the DPAA requires the continuation of the sanctions currently imposed on the Government of Sudan pursuant to E.O. 13067. However, section 8(e) of the DPAA exempts from the prohibitions of E.O. 13067 activities or related transactions with respect to certain areas in Sudan, including Southern Sudan, Southern Kordofan/Nuba Mountains State, Blue Nile State, Abyei, Darfur, and marginalized areas in and around Khartoum.

To reconcile sections 7 and 8(e) of the DPAA and to maintain in place sanctions on the Government of Sudan, the President issued Executive Order 13412 on October 13, 2006 (''E.O. 13412''). In E.O. 13412, the President determined that the Government of Sudan continues to implement policies and actions that violate human rights, in particular with respect to the conflict in Darfur, and that the Government of Sudan plays a pervasive role in Sudan's petroleum and petrochemical industries, thus constituting a threat to U.S. national security and foreign policy.

In light of these determinations, and in order to take additional steps with respect to the national emergency declared in E.O. 13067, section 1 of E.O. 13412 continues the blocking of the Government of Sudan's property and interests in property that are in or come within the United States, or that are in or come within the possession or control of United States persons. Section 2 of E.O. 13412 prohibits transactions by United States persons relating to the petroleum or petrochemical industries in Sudan, including, but not limited to, oilfield services and oil or gas pipelines. Both sections 1 and 2 of E.O. 13412 apply to the entire territory of Sudan.

Section 4 of E.O. 13412, consistent with section 8(e) of the DPAA, provides that the prohibitions contained in section 2 of E.O. 13067 no longer apply to activities or related transactions with respect to Southern Sudan, Southern Kordofan/Nuba Mountains State, Blue Nile State, Abyei, Darfur, or marginalized areas in and around Khartoum, provided that the transactions do not involve any property or interests in property of the Government of Sudan. Section 4(b)(ii) of E.O. 13412 authorizes the Secretary of State, after consultation with the Secretary of the Treasury, to define the geographic areas of Southern Sudan, Southern Kordofan/Nuba Mountains State, Blue Nile State, Abyei, Darfur, and marginalized areas in and around Khartoum for purposes of the order. In addition, section 6(d) of E.O. 13412 defines the term ''Government of Sudan'' to include its agencies, instrumentalities, and controlled entities, and the Central Bank of Sudan, but to exclude the regional government of Southern Sudan.

In accordance with E.O. 13412, the Office of Foreign Assets Control (''OFAC'') today is amending the SSR to add several new provisions implementing the provisions of E.O. 13412 discussed above. First, OFAC is renumbering §§ 538.210 and 538.211 as §§ 538.211 and 538.212, respectively, in order to add a new § 538.210. Paragraph (a) of new § 538.210 prohibits all transactions by United States persons relating to the petroleum or petrochemical industries in Sudan, including, but not limited to, oilfield services and oil or gas pipelines. Paragraph (b) of § 538.210 prohibits the facilitation by a United States person of any transaction relating to Sudan's petroleum or petrochemical industries.

Second, OFAC is adding an exemption to newly renumbered § 538.212. Paragraph (g)(1) of § 538.212 provides that, except for the provisions of §§ 538.201–203, 538.210, and 538.211, and except as provided in paragraph (g)(2) of § 538.212, the prohibitions contained in the SSR do not apply to activities or related transactions with respect to the Specified Areas of Sudan. This provision means that, subject to the new interpretive sections set forth below, activities and related transactions with respect to the Specified Areas of Sudan are no longer prohibited, unless they involve any property or interests in property of the Government of Sudan or relate to Sudan's petroleum or petrochemical industries. In addition, paragraph (g)(2) of § 538.212 states that the exemption does not apply to the exportation or reexportation of agricultural commodities, medicine, and medical devices. Section 906 of the Trade Sanctions Reform and Export Enhancement Act of 2000 (Pub. L. 106–387) continues to impose licensing requirements on these transactions, regardless of the intended destination in Sudan. These licensing requirements are implemented in §§ 538.523, 538.525, and 538.526.

Third, OFAC is revising the definition of the term *Government of Sudan* contained in § 538.305 to exclude the regional government of Southern Sudan, as set forth in section 6(d) of E.O. 13412.

Fourth, OFAC is adding a new definitional section to identify the areas of Sudan that were exempted in section 4(b) of E.O. 13412 from the prohibitions contained in section 2 of E.O. 13067. New § 538.320 defines the term *Specified Areas of Sudan* to mean Southern Sudan, Southern Kordofan/Nuba Mountains State, Blue Nile State, Abyei, Darfur, and marginalized areas in and around Khartoum. This section also defines the term ''marginalized areas in and around Khartoum'' to refer to four official camps for internally displaced persons.

Fifth, OFAC is adding interpretive § 538.417 to clarify that all of the prohibitions in the SSR apply to shipments of goods, services, and technology that transit areas of Sudan other than the Specified Areas of Sudan. Section 538.417(a) provides that an exportation or reexportation of goods, technology, or services to the Specified Areas of Sudan is exempt under § 538.212(g) only if it does not transit or transship through any area of Sudan other than the Specified Areas of Sudan. Section 538.417(b) provides that an importation into the United States of goods or services from, or originating in, the Specified Areas of Sudan is exempt under § 538.212(g) only if it does not

transit or transship through any area of Sudan other than the Specified Areas of Sudan. Thus, imports and exports to or from the Specified Areas of Sudan that do not transit or transship non-exempt areas of Sudan are not prohibited, provided that the Government of Sudan does not have an interest in the transaction and the transaction does not relate to Sudan's petroleum or petrochemical industries. However, imports and exports to or from the Specified Areas of Sudan that involve the transiting of, or transshipment through, non-exempt areas of Sudan, *e.g.*, Khartoum and Port Sudan, require authorization from OFAC.

OFAC is also adding interpretive § 538.418 to explain the prohibitions on financial transactions in Sudan. Financial transactions are no longer prohibited by the SSR if: (1) The underlying activity is not prohibited by the SSR; (2) the financial transaction involves a third-country depository institution, or a Sudanese depository institution not owned or controlled by the Government of Sudan, that is located in the Specified Areas of Sudan; and (3) the financial transaction is not routed through a depository institution that is located in the non-exempt areas or that is owned or controlled by the Government of Sudan, wherever located. However, any financial transactions that involve, in any manner, depository institutions that are located in the non-exempt areas of Sudan, *e.g.*, Khartoum, remain prohibited and require authorization from OFAC.

For example, if a financial transaction involves a branch of a depository institution in the Specified Areas of Sudan, but that depository institution is headquartered in Khartoum and requires all financial transactions to be routed through the headquarters or another branch located in the non-exempt areas of Sudan, that transaction is prohibited and requires authorization from OFAC.

Finally, OFAC is amending the SSR to add three new general licenses, which are set forth in §§ 538.530, 538.531, and 538.532. Paragraph (a) of § 538.530 provides that all general licenses issued pursuant to E.O. 13067 are authorized and remain in effect pursuant to E.O. 13412. Paragraph (b) of § 538.530 provides that all specific licenses and all nongovernmental organization registrations issued pursuant to E.O. 13067 or the SSR prior to October 13, 2006, are authorized pursuant to E.O. 13412 and remain in effect until the expiration date specified in the license or registration, or if no expiration date is specified, June 30, 2008. OFAC urges all license and nongovernmental organization registration holders to take note of this potentially new expiration date, which applies to all licenses and registrations that do not otherwise contain an expiration date, regardless of when they were originally issued.

The second general license, new § 538.531, authorizes otherwise prohibited official activities of the United States Government and international organizations. Subject to certain conditions and limitations, paragraph (a)(1) of § 538.531 authorizes all transactions and activities otherwise prohibited by the SSR or E.O. 13412 that are for the conduct of the official business of the United States Government by contractors or grantees thereof. Employees who engage in transactions for the conduct of the official business of the United States Government already are exempt from these prohibitions. See § 538.212(e) and section 5(a) of E.O. 13412. Paragraph (a)(2) of § 538.531 authorizes, subject to the same conditions and limitations as paragraph (a)(1), all transactions and activities otherwise prohibited by the SSR or E.O. 13412 that are for the conduct of the official business of the United Nations, or United Nations specialized agencies, programmes, and funds, by employees, contractors, or grantees thereof. Paragraphs (b), (c), and (d) of § 538.531 set forth conditions and limitations on the authorizations described in paragraph (a).

The third general license, § 538.532, authorizes humanitarian transshipments of goods, technology, or services through non-exempt areas of Sudan to or from Southern Sudan and Darfur. This license will be subject to review on an annual basis. Upon completion of the annual review, OFAC may revoke the general license through the issuance of a notice in the **Federal Register**. If OFAC does not take any action, this license will remain in force.

Public Participation

Because the amendment of the SSR involve a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The collections of information related to the SSR are contained in 31 CFR part 501 (the ''Reporting, Procedures and Penalties Regulations''). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505–0164. 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 control number.

List of Subjects in 31 CFR Part 538

Administrative practice and procedure, Banks, Banking, Blocking of assets, Exports, Foreign trade, Humanitarian aid, Imports, Penalties, Reporting and recordkeeping requirements, Specially designated nationals, Sudan, Terrorism, Transportation.

■ For the reasons set forth in the preamble, the Office of Foreign Assets Control amends 31 CFR part 538 as follows:

PART 538—SUDANESE SANCTIONS REGULATIONS

■ 1. Revise the authority citation for part 538 to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 18 U.S.C. 2339B, 2332d; 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 106–387, 114 Stat. 1549; Pub. L. 109–344, 120 Stat. 1869; Pub. L. 110–96, 121 Stat. 1011; E.O. 13067, 62 FR 59989, 3 CFR, 1997 Comp., p. 230; E.O. 13412, 71 FR 61369, October 13, 2006.

Subpart B—Prohibitions

■ 2. Redesignate §§ 538.210 and 538.211 as §§ 538.211 and 538.212, respectively, and add a new § 538.210 to read as follows:

§ 538.210 Prohibited transactions relating to petroleum and petrochemical industries.

(a) Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to October 13, 2006, all transactions by United States persons relating to the petroleum or petrochemical industries in Sudan, including, but not limited to, oilfield services and oil or gas pipelines, are prohibited.

(b) Except as otherwise authorized, the facilitation by a United States person, including but not limited to brokering activities, of any transaction relating to the petroleum or petrochemical industries in Sudan is prohibited.

■ 3. Add a new paragraph (g) to newly redesignated § 538.212 to read as follows:

§ 538.212 Exempt transactions.

* * * * *

(g)(1) *Specified Areas of Sudan.* Except for the provisions of §§ 538.201 through 538.203, 538.210, and 538.211, and except as provided in paragraph (g)(2) of this section, the prohibitions contained in this part do not apply to activities or related transactions with respect to the Specified Areas of Sudan.

(2) The exemption in paragraph (g)(1) of this section does not apply to the exportation or reexportation of agricultural commodities (including bulk agricultural commodities listed in appendix A to this part 538), medicine, and medical devices.

Note to § 538.212(g)(2). See §§ 538.523, 538.525, and 538.526 for licensing requirements governing the transactions described in paragraph (g)(2) of this section.

Subpart C—General Definitions

■ 4. Amend § 538.305 by redesignating paragraphs (a) through (d) as paragraphs (a)(1) through (a)(4), respectively, redesignating the introductory text as paragraph (a) introductory text, revising the newly designated paragraph (a), and adding a new paragraph (b) to read as follows:

§ 538.305 Government of Sudan.

(a) The term *Government of Sudan* includes:

(1) The state and the Government of Sudan, as well as any political subdivision, agency, or instrumentality thereof, including the Central Bank of Sudan;

(2) Any entity owned or controlled by the foregoing;

(3) Any person to the extent that such person is, or has been, or to the extent that there is reasonable cause to believe that such person is, or has been, since the effective date, acting or purporting to act directly or indirectly on behalf of any of the foregoing; and

(4) Any other person determined by the Director of the Office of Foreign Assets Control to be included within paragraphs (a)(1) through (a)(3) of this section.

(b) Effective October 13, 2006, the term *Government of Sudan,* as defined in paragraph (a) of this section, does not include the regional government of Southern Sudan.

* * * * *

■ 5. Add a new § 538.320 to read as follows:

§ 538.320 Specified Areas of Sudan.

(a) The term *Specified Areas of Sudan* means Southern Sudan, Southern Kordofan/Nuba Mountains State, Blue Nile State, Abyei, Darfur, and marginalized areas in and around Khartoum.

(b) The term *marginalized areas in and around Khartoum* means the following official camps for internally displaced persons: Mayo, El Salaam, Wad El Bashir, and Soba.

Subpart D—Interpretations

■ 6. Add a new § 538.417 to read as follows:

§ 538.417 Transshipments through Sudan.

(a) The exportation or reexportation of goods, technology, or services to the Specified Areas of Sudan is exempt under § 538.212(g) only if such goods, technology, or services do not transit or transship through any area of Sudan other than the Specified Areas of Sudan.

(b) The importation into the United States of goods or services from, or originating in, the Specified Areas of Sudan is exempt under § 538.212(g) only if such goods or services do not transit or transship through any area of Sudan other than the Specified Areas of Sudan.

Note to § 538.417. See § 538.532, which authorizes humanitarian transshipments to or from Southern Sudan and Darfur.

■ 7. Add a new § 538.418 to read as follows:

§ 538.418 Financial transactions in Sudan.

(a) Any financial transaction with a depository institution located in an area of Sudan other than the Specified Areas of Sudan, *e.g.*, Khartoum, remains prohibited.

(b) Financial transactions are no longer prohibited by this part if:

(1) The underlying activity is not prohibited by this part;

(2) The financial transaction involves a third-country depository institution, or a Sudanese depository institution not owned or controlled by the Government of Sudan, that is located in the Specified Areas of Sudan; and

(3) The financial transaction is not routed through a depository institution that is located in an area of Sudan other than the Specified Areas of Sudan or that is owned or controlled by the Government of Sudan, wherever located.

(c) *Example.* A U.S. bank is instructed to transfer funds to the Abyei branch of a Sudanese bank that is not owned or controlled by the Government of Sudan. In order for the transfer to take place, the U.S. bank is required to route the funds through the Sudanese bank's headquarters, which is located in Khartoum. Due to the routing of the financial transaction through Khartoum, this transaction is prohibited and requires authorization from the Office of Foreign Assets Control. However, if the U.S. bank is able to bypass the Khartoum headquarters and transfer the funds directly to the Abyei branch of the Sudanese bank, then the transaction would not be prohibited.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

■ 8. Add a new § 538.530 to read as follows:

§ 538.530 Licenses and registrations issued pursuant to Executive Order 13067 or this part authorized pursuant to Executive Order 13412.

(a) All general licenses issued pursuant to Executive Order 13067 are authorized pursuant to Executive Order 13412 and remain in effect.

(b) All specific licenses and all nongovernmental organization registrations issued pursuant to Executive Order 13067 or this part prior to October 13, 2006, are authorized pursuant to Executive Order 13412 and remain in effect until the expiration date specified in the license or registration or, if no expiration date is specified, June 30, 2008.

■ 9. Add a new § 538.531 to read as follows:

§ 538.531 Official activities of the United States Government and international organizations.

(a) Subject to the conditions of paragraphs (b), (c), and (d) of this section, the following transactions are authorized:

(1) All transactions and activities otherwise prohibited by this part that are for the conduct of the official business of the United States Government or the United Nations by contractors or grantees thereof; and

(2) All transactions and activities otherwise prohibited by this part that are for the conduct of the official business of the United Nations specialized agencies, programmes, and funds by employees, contractors, or grantees thereof.

(b) Contractors or grantees conducting transactions authorized pursuant to paragraph (a) of this section must provide a copy of their contract or grant with the United States Government or the United Nations, or its specialized agencies, programmes, and funds, to any U.S. person before the U.S. person engages in or facilitates any transaction or activity prohibited by this part. If the contract or grant contains any sensitive or proprietary information, such information may be redacted or removed from the copy given to the U.S. person, provided that the information is

not necessary to demonstrate that the transaction is authorized pursuant to paragraph (a) of this section.

(c) Any U.S. person engaging in or facilitating transactions authorized pursuant to this section shall keep a full and accurate record of each such transaction, including a copy of the contract or grant, and such record shall be available for examination for at least five (5) years after the date of the transaction.

(d) No payment pursuant to this section may involve a debit to an account blocked pursuant to this part.

Note 1 to § 538.531. This license does not relieve any persons participating in transactions authorized hereunder from compliance with any other U.S. legal requirements applicable to the transactions authorized pursuant to paragraph (a) of this section. *See, e.g.*, the Export Administration Regulations (15 CFR parts 730 *et seq.*).

Note 2 to § 538.531. Paragraph (e) of § 538.212 exempts transactions for the conduct of the official business of the Federal Government or the United Nations by employees thereof from the prohibitions contained in this part.

■ 10. Add a new § 538.532 to read as follows:

§ 538.532 Humanitarian transshipments to or from Southern Sudan and Darfur authorized.

The transit or transshipment to or from Southern Sudan and Darfur of goods, technology, or services intended for humanitarian purposes, through any area of Sudan not exempted by paragraph (g)(1) of § 538.212, is authorized.

Dated: October 23, 2007.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E7–21443 Filed 10–30–07; 8:45 am]

BILLING CODE 4811–45–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Parts 594, 595, and 597

Global Terrorism Sanctions Regulations; Terrorism Sanctions Regulations; Foreign Terrorist Organizations Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Foreign Assets Control of the U.S. Department of the Treasury (''OFAC'') is revising the Global Terrorism Sanctions Regulations, the Terrorism Sanctions Regulations, and the Foreign Terrorist Organizations Sanctions Regulations to add a new general license authorizing all transactions with the Palestinian Authority, as defined in the general license.

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

FOR FURTHER INFORMATION CONTACT: Assistant Director for Compliance, Outreach & Implementation, tel.: 202/622–2490, Assistant Director for Licensing, tel.: 202/622–2480, Assistant Director for Policy, tel.: 202/622–4855, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), tel.: 202/622–2410, Office of the General Counsel, Department of the Treasury, Washington, DC 20220 (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning the Office of Foreign Assets Control (''OFAC'') are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on demand service, tel.: (202) 622–0077.

Background

OFAC administers three sanctions programs with respect to terrorists and terrorist organizations. The Terrorism Sanctions Regulations, 31 CFR part 595 (''TSR''), implement Executive Order 12947 of January 23, 1995, in which the President declared a national emergency with respect to ''grave acts of violence committed by foreign terrorists that disrupt the Middle East peace process * * *'' The Global Terrorism Sanctions Regulations, 31 CFR part 594 (''GTSR''), implement Executive Order 13224 of September 23, 2001, in which the President declared an emergency more generally with respect to ''grave acts of terrorism and threats of terrorism committed by foreign terrorists * * *'' The Foreign Terrorist Organizations Sanctions Regulations, 31 CFR part 597 (''FTOSR''), implement provisions of the Antiterrorism and Effective Death Penalty Act of 1996.

HAMAS is a target of each of these sanctions programs, resulting in the blocking of its property and interests in property that are in the United States or within the possession or control of a U.S. person. In the case of the FTOSR, U.S. financial institutions are required to retain possession or control of any funds of HAMAS and report the existence of such funds to Treasury. These restrictions effectively prohibit U.S. persons from dealing in property or interests in property of HAMAS. Following the 2006 parliamentary elections in the West Bank and Gaza, which resulted in HAMAS members forming the majority party within the Palestinian Legislative Council and holding positions of authority within the government, OFAC determined that HAMAS had a property interest in the transactions of the Palestinian Authority. That determination remains in place. Accordingly, pursuant to the TSR, the GTSR, and the FTOSR, U.S. persons are prohibited from engaging in transactions with the Palestinian Authority unless authorized. On April 12, 2006, OFAC issued six general licenses authorizing U.S. persons to engage in certain transactions in which the Palestinian Authority may have an interest.

Based on foreign policy considerations resulting from recent events in the West Bank and Gaza, including the appointment of Salam Fayyad as the new Prime Minister of the Palestinian Authority and of other ministers not affiliated with HAMAS, OFAC is revising the TSR, GTSR, and FTOSR to add a new general license as TSR § 595.514, GTSR § 594.516, and FTOSR § 597.512. Paragraph (a) of new §§ 595.514, 594.516, and 597.512 authorizes U.S. persons to engage in all transactions with the Palestinian Authority. Paragraph (b) of these sections defines the term Palestinian Authority, for purposes of the authorization in paragraph (a), as the Palestinian Authority government of Prime Minister Salam Fayyad and President Mahmoud Abbas, including all branches, ministries, offices, and agencies (independent or otherwise) thereof. Transactions with HAMAS, or in any property in which HAMAS has an interest, not covered by the general license remain prohibited.

Public Participation

Because the amendment of 31 CFR parts 594, 595, and 597 involves a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The collections of information related to 31 CFR parts 594, 595, and 597 are contained in 31 CFR part 501 (the ''Reporting, Procedures and Penalties Regulations''). Pursuant to the Paperwork Reduction Act of 1995 (44

U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505–0164. 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 control number.

List of Subjects

31 CFR Part 594

Administrative practice and procedure, Banks, Banking, Currency, Foreign investments in United States, Penalties, Reporting and recordkeeping requirements, Securities, Terrorism.

31 CFR Part 595

Administrative practice and procedure, Banks, Banking, Currency, Foreign investments in United States, Penalties, Reporting and recordkeeping requirements, Securities, Terrorism.

31 CFR Part 597

Administrative practice and procedure, Banks, Banking, Currency, Foreign investments in United States, Penalties, Reporting and recordkeeping requirements, Securities, Terrorism.

■ For the reasons set forth in the preamble, the Office of Foreign Assets Control amends 31 CFR parts 594, 595, and 597 as follows:

PART 594—GLOBAL TERRORISM SANCTIONS REGULATIONS

■ 1. Revise the authority citation for part 594 to read as follows:

Authority: 3 U.S.C. 301; 22 U.S.C. 287c; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; E.O. 13268, 67 FR 44751, 3 CFR, 2002 Comp., p. 240; E.O. 13284, 68 FR 4075, 3 CFR, 2003 Comp., p. 161.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

■ 2. Add a new § 594.516 to read as follows:

§ 594.516 Transactions with the Palestinian Authority authorized.

(a) As of June 20, 2007, U.S. persons are authorized to engage in all transactions otherwise prohibited under this part with the Palestinian Authority.

(b) For purposes of this section only, the term *Palestinian Authority* means the Palestinian Authority government of Prime Minister Salam Fayyad and President Mahmoud Abbas, including all branches, ministries, offices, and agencies (independent or otherwise) thereof.

PART 595—TERRORISM SANCTIONS REGULATIONS

■ 3. Revise the authority citation for part 595 to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 319.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

■ 4. Add a new § 595.514 to read as follows:

§ 595.514 Transactions with the Palestinian Authority authorized.

(a) As of June 20, 2007, U.S. persons are authorized to engage in all transactions otherwise prohibited under this part with the Palestinian Authority.

(b) For purposes of this section only, the term *Palestinian Authority* means the Palestinian Authority government of Prime Minister Salam Fayyad and President Mahmoud Abbas, including all branches, ministries, offices, and agencies (independent or otherwise) thereof.

PART 597—FOREIGN TERRORIST ORGANIZATIONS SANCTIONS REGULATIONS

■ 5. The authority citation for part 597 continues to read as follows:

Authority: 31 U.S.C. 321(b); Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 104–132, 110 Stat. 1214, 1248–53 (8 U.S.C. 1189, 18 U.S.C. 2339B).

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

■ 6. Add a new § 597.512 to read as follows:

§ 597.512 Transactions with the Palestinian Authority authorized.

(a) As of June 20, 2007, U.S. persons are authorized to engage in all transactions otherwise prohibited under this part with the Palestinian Authority.

(b) For purposes of this section only, the term *Palestinian Authority* means the Palestinian Authority government of Prime Minister Salam Fayyad and President Mahmoud Abbas, including all branches, ministries, offices, and agencies (independent or otherwise) thereof.

Dated: October 23, 2007.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E7–21357 Filed 10–30–07; 8:45 am]

BILLING CODE 4811–45–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. CGD14–07–002]

RIN 1625–AA87

Security Zone; Nawiliwili Harbor, Kauai, HI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is creating a temporary security zone in the waters of Nawiliwili Harbor, Kauai, and on the land of the jetty south of Nawiliwili Park, including the jetty access road commonly known as Jetty Road. This zone is intended to enable the Coast Guard and its law enforcement partners to better protect people, vessels, and facilities in and around Nawiliwili Harbor in the face of non-compliant obstructers who have impeded, and threaten to continue impeding, the safe passage of the Hawaii Superferry in Nawiliwili Harbor. This rule complements, but does not replace or supersede, existing regulations that establish a moving 100-yard security zone around large passenger vessels like the Hawaii Superferry.

DATES: This rule is effective from November 1, 2007, through November 30, 2007.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD14–07–002 and are available for inspection and copying at U.S. Coast Guard District 14, Room 9–130, PJKK Federal Building, 300 Ala Moana Blvd., Honolulu, Hawaii 96850 between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Sean Fahey, U.S. Coast Guard District 14 at (808) 541–2106.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On October 3, 2007, we published a notice of proposed rulemaking (NPRM) entitled ''Security Zone; Nawiliwili Harbor, Kauai, Hawaii'' in the **Federal Register** (72 FR 56308), identified by docket number USCG–2007–29354. The comment period for that NPRM was originally set to expire on October 24, 2007. Although we received many comments on the NPRM, a few people wishing to submit comments expressed difficulty using the Federal eRulemaking Portal, one of the four

methods available to submit comments on the NPRM.

Recently, the Coast Guard migrated its online rulemaking docket from the Docket Management System (DMS) to the Federal Docket Management System (FDMS). (72 FR 54315, Sept. 24, 2007.) This migration has been accompanied by transition difficulties and delays in comments being posted on FDMS. To accommodate the public, the comment period for that rulemaking (USCG–2007–29354) has been extended until November 20, 2007. A separate notice extending the comment period for the USCG–2007–29354 NPRM can be found elsewhere in this issue of the **Federal Register**.

This temporary final rule, identified by docket CGD14 07–002, is a separate emergency rulemaking that will maintain a security zone for Nawiliwili Harbor, Kauai from November 1 through November 30, 2007, after an existing security zone (72 FR 50877, Sept. 5, 2007) expires and while we complete the USCG–2007–29354 notice-and-comment rulemaking. We did not publish an NPRM for this regulation.

Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM for this temporary rule. It would be contrary to public interest not to maintain a security zone for Nawiliwili Harbor until the USCG–2007–29354 rulemaking is completed.

Though operation of the Hawaii Superferry from Oahu to Kauai has been voluntarily suspended by the operating company, operations could resume at any time. As of October 24, 2007, there are no, nor have there been, any state court injunctions or other legal prohibitions on the Superferry resuming operations between Oahu and Kauai. Although the Superferry's operating company announced on September 21, 2007, that it was ''indefinitely'' suspending operations into and out of Kauai, that suspension is only voluntary; nothing binds the company to adhere to that suspension of operations, and in fact, it could decide to sail for Kauai at any time. Furthermore, the Hawaii legislature has announced that it will commence a special legislative session beginning on October 24, 2007, at which, among other things, it intends to consider a bill that would allow the Superferry to operate into and out of Hawaii's ports while an environmental impact statement regarding Superferry operations is being prepared. To the extent this legislative action may permit the Superferry to resume operations into and out of Maui, which it is currently enjoined from doing, and to the extent the operating company's decision to ''indefinitely'' suspend operations into and out of Kauai was tied to the company's inability to operate into and out of Maui, this legislative action may well have the net effect of causing the Superferry's operating company to renew its desire to resume operations to Kauai as soon as possible. Delay in implementing this rule would expose obstructers in the water and ashore, as well as ferry passengers and crew, to undue hazards due to the obstructers' tactics of entering Nawiliwili Harbor from land and waterfront facilities adjacent to the harbor and using themselves as human barriers to obstruct the Superferry's movement into Nawiliwili Harbor, a transit that under the best of circumstances is difficult to make due to the small size of the Harbor.

For the same reasons, under 5 U.S.C. 533(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

The Hawaii Superferry (HSF) is a 349-foot large passenger vessel documented by the U.S. Coast Guard with an endorsement for coastwise trade, and certificated for large passenger vessel service in the United States. The HSF, operating Hawaii's first inter-island vehicle-passenger service, is intended to provide service among the islands of Oahu, Maui, and Kauai.

The HSF enters Kauai at Nawiliwili Harbor, a federally maintained waterway. During the HSF's inaugural commercial trip to Kauai on August 26, 2007, nearly 40 swimmers and obstructers on kayaks and surfboards blocked Nawiliwili Harbor's navigable channel entrance to prevent the lawful entry of the HSF into Kauai. Many of the obstructers entered the water from the jetty that is south of Nawiliwili Park, which is adjacent to the Matson shipping facility in Nawiliwili Harbor. Other demonstrators ashore on the jetty threw rocks and bottles at Coast Guard personnel who were conveying detained obstructers to shore. Coast Guard Station Kauai resources were eventually able to clear the channel for the HSF's arrival while also ensuring the personal safety of the waterborne obstructers. The HSF was able to dock on August 26, 2007.

On the following day, August 27, 2007, approximately 70 persons entered the water again to block the channel entrance, thereby preventing the HSF from docking in Nawiliwili Harbor. Due to the difficulty of maneuvering in the small area of Nawiliwili Harbor, and in the interest of ensuring the safety of the protesters, the HSF's master chose not to enter the channel until the Coast Guard cleared the channel of obstructers. However, because the vessel remained outside the harbor, and because the obstructers did not approach within 100 yards of the vessel, the existing security zone for large passenger vessels (33 CFR 165.1410) did not provide the Coast Guard with the authority to control obstructer entry into Nawiliwili Harbor or clear the channel of obstructers before the HSF commenced its transit into the harbor.

After waiting 3 hours, and with nearly 20 obstructers still in the water actively blocking the HSF, the HSF was forced to return to Oahu without mooring in Kauai. This decision was made by the Superferry's master, in consultation with company officials.

As a result of the events of August 26 through 27, 2007, the HSF voluntarily suspended operations between Oahu and Kauai on August 28, 2007. HSF's goal, however, was and is to resume operations between Oahu and Kauai as soon as possible. As of October 24, 2007, there are no, nor have there been, any state court injunctions or other legal prohibitions on the HSF resuming operations between Oahu and Kauai.

Although the Superferry's operating company announced on September 21, 2007, that it was ''indefinitely'' suspending operations into and out of Kauai, that suspension is only voluntary; nothing binds the company to adhere to that suspension of operations, and in fact, it could decide to sail for Kauai at any time. Furthermore, the Hawaii legislature has announced that it will commence a special legislative session beginning on October 24, 2007, at which, among other things, it intends to consider a bill that would allow the Superferry to operate into and out of Hawaii's ports while an environmental impact statement regarding Superferry operations is being prepared. To the extent this legislative action may permit the Superferry to resume operations into and out of Maui, which it is currently enjoined from doing, and to the extent the operating company's decision to ''indefinitely'' suspend operations into and out of Kauai was tied to the company's inability to operate into and out of Maui, this legislative action may well have the net effect of causing the Superferry's operating company to renew its desire to resume operations to Kauai as soon as possible.

Responding to the unexpected events of August 26 and 27, 2007, the Coast Guard's Fourteenth District Commander established a temporary fixed security

zone in Nawiliwili Harbor. That emergency rulemaking established a temporary security zone in order to prevent persons and vessels from endangering themselves and HSF passengers and crew by attempting to impede the vessel's passage after it commences the difficult transit into the harbor. That rule, which became effective September 1, 2007, was issued by the Coast Guard's Fourteenth District Commander on August 31, 2007 (72 FR 50877, September 5, 2007).

The purpose of this temporary rule, as with the rule that is expiring October 31, is several-fold. First, by designating significant portions of the waters of Nawiliwili Harbor as a security zone, activated for enforcement 60 minutes before the HSF's arrival into the zone through 10 minutes after its departure from the zone, this temporary rule provides the Coast Guard and its law enforcement partners the authority to prevent persons and vessels from endangering themselves and the HSF passengers and crew during attempts to impede the vessel's passage after it commences the difficult transit into the harbor. Extending the security zone to Nawiliwili Jetty and its access road provides law enforcement personnel with the authority necessary to control access into the water so the HSF may enter and depart the harbor safely and unimpeded by obstructers. Furthermore, closing off the jetty and its access road prevents violent protesters from continuing to impede law enforcement operations and endanger law enforcement personnel by throwing rocks, bottles, and other dangerous objects. Finally, the security zone makes land adjacent to the harbor available for law enforcement purposes, and in fact will be used by the Patrol Commander (the person in overall command of all waterborne law enforcement assets present in Nawiliwili Harbor enforcing the security zone) as the command post during any Superferry protests.

This temporary final rule follows the original temporary final rule that is set to expire on October 31, 2007. There is continued uncertainty regarding when, if ever, the HSF might resume service into Nawiliwili Harbor. The resolve of obstructers to continue attempting to impede the Superferry's passage into and through Nawiliwili Harbor, should it indeed resume service there, has been vocally manifested. Therefore, the Coast Guard has determined there is a need to ensure that law enforcement personnel will still have a fixed security zone available to them beyond the expiration date of the original temporary final rule to facilitate the safe arrival of the HSF, should it again return to Nawiliwili Harbor.

Discussion of the Rule

This temporary rule is in effect from November 1, 2007, until November 30, 2007. It creates a security zone in most of the waters of Nawiliwili Harbor, and on Nawiliwili Jetty in Nawiliwili Harbor. The security zone will be activated for enforcement 60 minutes before the Hawaii Superferry's arrival into the zone, and remain activated for 10 minutes after the Hawaii Superferry's departure from the zone. The activation of the zone for enforcement will be announced by marine information broadcast and by a red flag, illuminated after sunset, displayed from Pier One and the Harbor Facility Entrance on Jetty Road. During its period of activation and enforcement, entry into the land and water areas of the security zone are prohibited without the permission of the Captain of the Port, Honolulu, or his or her designated representative.

In preparing this temporary rulemaking, the Coast Guard made sure to consider the rights of lawful protestors. To that end, the Coast Guard excluded from the security zone two regions which create a sizeable area of water in which demonstrators may lawfully assemble and convey their message in a safe manner to their intended audience. These areas include the waters west of a line running from the southeastern-most point of the breakwater of Nawiliwili Small Boat Harbor due south to the south shore of the harbor, and the waters from Kalapaki Beach south to a line extending from the western most point of Kukii Point due west to the Harbor Jetty. These areas of the harbor not included in the security zone are completely accessible to anyone who desires to enter the water, and are fully visible to observers ashore, at the HSF mooring facility, aboard the HSF when transiting the harbor, and from the air.

The Coast Guard also took into account the lawful users of Nawiliwili Harbor in its creation of this rule. As previously noted, the rule will only be activated 1 hour before the HSF's arrival into port, and will be deactivated 10 minutes after the HSF departs the port. The harbor is fully available to all users during the period when the zone is not activated. Furthermore, the rule affords persons who want to use the harbor, even during a period when the zone is activated, with the opportunity to request permission of the Captain of the Port to do so.

Under 33 CFR 165.33, entry by persons or vessels into the security zone during an enforcement period is prohibited unless authorized by the Coast Guard Captain of the Port, Honolulu or his or her designated representatives.

Operation of any type of vessel, including every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water, within the security zone during an enforcement period is prohibited. If a vessel is found to be operating within the security zone during an enforcement period without permission of the Captain of the Port, Honolulu, and refuses to leave, the vessel is subject to seizure and forfeiture.

All persons and vessels permitted in the security zone during an enforcement period must comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol personnel. These personnel include commissioned, warrant, and petty officers of the Coast Guard and other persons permitted by law to enforce this regulation. Upon being hailed by an authorized vessel or law enforcement officer using siren, radio, flashing light, loudhailer, voice command, or other means, the operator of a vessel must proceed as directed.

If authorized passage through the security zone, a vessel must operate at the minimum speed necessary to maintain a safe course and must proceed as directed by the Captain of the Port or his or her designated representatives. While underway with permission of the Captain of the Port or his or her designated representatives, no person or vessel is allowed within 100 yards of the Hawaii Superferry when it is underway, moored, position-keeping, or at anchor, unless authorized by the Captain of the Port or his or her designated representatives.

When conditions permit, the Captain of the Port, or his or her designated representatives, may permit vessels that are at anchor, restricted in their ability to maneuver, or constrained by draft to remain within the security zone during the enforcement period in order to ensure navigational safety. Any Coast Guard commissioned, warrant, or petty officer, and any other person permitted by law, may enforce the regulations in this section.

Regulatory Evaluation

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

Budget has not reviewed it under that Order.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. This expectation is based on the short activation and enforcement duration of the security zone created by this temporary rule, as well as the limited geographic area affected by the security zone.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. While we are aware that the affected area has small entities, including canoe and boating clubs and small commercial businesses that provide recreational services, we anticipate that there will be little or no impact to these small entities due to the narrowly tailored scope of the temporary rule, and to the fact that such entities can request permission from the Captain of the Port to enter the security zone when it is activated.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Sean Fahey, U.S. Coast Guard District 14, at (808) 541–2106. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that might disproportionately affect children. While some obstructers used small children in obstruction tactics, both on land and on shore, during the August 26 and 27 Superferry arrivals into Kauai, and while online forums and other sources indicate that organizers are actively recruiting adolescents and small children with the intent of putting them into harm's way as obstructers of the Superferry's passage should it ever again approach and enter Nawiliwili Harbor, any heightened harm faced by children as a result of these tactics has no relation to the creation of this rule. Instead, those heightened risks are entirely the product of persons who recruit and employ adolescents and children to put themselves at risk of death or serious physical injury by attempting to physically obstruct the passage of a large passenger vessel in a small harbor.

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this temporary rule under Commandant Instruction M16475.1D which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, under figure 2–1, paragraph (34)(g) of the Commandant Instruction M16475.1D, this temporary rule is categorically excluded from further environmental documentation. An ''Environmental Analysis Checklist'' and ''Categorical Exclusion Determination'' supporting this conclusion are available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a new temporary § 165.T14–163 to read as follows:

§ 165.T14–163 Security Zone; Nawiliwili Harbor, Kauai, HI.

(a) *Location.* The following land areas, and water areas from the surface of the water to the ocean floor, are a security zone that is activated as described in paragraph (c) of this section, and enforced subject to the provisions of paragraph (d) of this section: All waters of Nawiliwili Harbor, Kauai, shoreward of the Nawiliwili Harbor COLREGS DEMARCATION LINE (See 33 CFR 80.1450), excluding the waters west of a line running from the southeastern most point of the breakwater of Nawiliwili Small Boat Harbor due south to the south shore of the harbor, and excluding the waters from Kalapaki Beach south to a line extending from the western most point of Kukii Point due west to the Harbor Jetty. The land of the jetty south of Nawiliwili Park, including the jetty access road, commonly known as Jetty Road, is included within the security zone.

(b) *Effective period.* This section is effective from November 1, 2007, through November 30, 2007. It will be activated for enforcement pursuant to paragraph (c) of this section.

(c) *Enforcement periods.* The zone described in paragraph (a) of this section will be activated for enforcement 60 minutes before the Hawaii Superferry's arrival into the zone and remain activated for 10 minutes after the Hawaii Superferry's departure from the zone. The activation of the zone for enforcement will be announced by marine information broadcast, and by a red flag, illuminated between sunset and sunrise, displayed from Pier One and the Harbor Facility Entrance on Jetty Road.

(d) *Regulations.* (1) Under 33 CFR 165.33, entry by persons or vessels into the security zone created by this section and activated as described in paragraph (c) of this section is prohibited unless authorized by the Coast Guard Captain of the Port, Honolulu or his or her designated representatives. Operation of any type of vessel, including every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water, within the security zone is prohibited. If a vessel is found to be operating within the security zone without permission of the Captain of the Port, Honolulu, and refuses to leave, the vessel is subject to seizure and forfeiture.

(2) All persons and vessels permitted in the security zone must comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol personnel. These personnel include commissioned, warrant, and petty officers of the Coast Guard and other persons permitted by law to enforce this regulation. Upon being hailed by an authorized vessel or law enforcement officer using siren, radio, flashing light, loudhailer, voice command, or other means, the operator of a vessel must proceed as directed.

(3) If authorized passage through the security zone, a vessel must operate at the minimum speed necessary to maintain a safe course and must proceed as directed by the Captain of the Port or his or her designated representatives. While underway with permission of the Captain of the Port or his or her designated representatives, no person or vessel is allowed within 100 yards of the Hawaii Superferry when it is underway, moored, position-keeping, or at anchor, unless authorized by the Captain of the Port or his or her designated representatives.

(4) When conditions permit, the Captain of the Port, or his or her designated representatives, may permit vessels that are at anchor, restricted in their ability to maneuver, or constrained by draft to remain within the security zone in order to ensure navigational safety.

(e) *Enforcement officials.* Any Coast Guard commissioned, warrant, or petty officer, and any other person permitted by law, may enforce the regulations in this section.

Dated: October 24, 2007.

Sally Brice-O'Hara,

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

[FR Doc. 07–5413 Filed 10–26–07; 2:34 pm]

BILLING CODE 4910–15–P

POSTAL SERVICE

39 CFR Part 20

International Mail Service to the Republic of the Marshall Islands and Federated States of Micronesia Reverted to Domestic Mail Service

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service is amending the *Mailing Standards of the United States Postal Service*, International Mail Manual (IMM®) to remove references to the Republic of the Marshall Islands and the Federated States of Micronesia. Mail to the Republic of the Marshall Islands and the Federated States of Micronesia is no longer treated as international mail.

DATES: *Effective Date:* November 19, 2007.

FOR FURTHER INFORMATION CONTACT: Randall F. Sobol, 808–423–3883.

SUPPLEMENTARY INFORMATION: The Postal Service, after high-level discussions with the Republic of the Marshall Islands and the Federated States of Micronesia and consultation with the U.S. Department of State, is returning these countries to domestic published prices and mailing standards.

On September 15, 2005, the Postal Service published in the **Federal Register** (70 FR 54510) a notice proposing use of the international price schedules for the Republic of the Marshall Islands and the Federated States of Micronesia. The application of international rate schedules to these former Trust Territories of the United States was permissible, in conformity with, and in furtherance of the terms of the Compact of Free Association between the United States Government and the governments of the Republic of the Marshall Islands and the Federated

States of Micronesia. After considering comments on its proposal to move these nations to international postal prices, fees, and mail classifications, the Postal Service published, on November 23, 2005, in the **Federal Register** (70 FR 70976), a notice implementing the new published prices and mailing standards. That notice amended the *Mailing Standards of the United States Postal Service*, International Mail Manual (IMM®) to include the Republic of the Marshall Islands and the Federated States of Micronesia in most international products and services, and added them to the individual country listings. A subsequent article removed all references to these countries from the *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM®).

This final rule rescinds the final rule published on November 23, 2005. Effective November 19, 2007, the Republic of the Marshall Islands and the Federated States of Micronesia will revert to the domestic mail classification schedule that was in effect prior to January 8, 2006, the effective date of the original article. The application of international rates to these Freely Associated States had observable effects on the economy and business correspondence of the Republic of the Marshall Islands and the Federated States of Micronesia. The Postal Service had considered a number of business solutions to lessen that impact. Technological and other obstacles currently make other solutions impracticable. Therefore, to allow the governments of the Republic of the Marshall Islands and the Federated States of Micronesia to continue to pursue appropriate long term solutions to this problem without adversely impacting the economies of the parties and the lives of their people, the Postal Service takes this step to return the parties and their people to the position they held prior to the application of the international mail schedule to them. An additional article will be published to add references to these countries to the *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM®).

List of Subjects in 39 CFR Part 20

Foreign relations, International postal services.

■ For the reasons discussed above, the Postal Service hereby adopts the following amendments to the International Mail Manual which is incorporated by reference in the Code of Federal Regulations (see 39 CFR part 20).

PART 20—[AMENDED]

■ 1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

■ 2. Amend the *Mailing Standards of the United States Postal Service*, International Mail Manual (IMM) as follows.

* * * * *

2 Conditions for Mailing

210 Global Express Guaranteed

* * * * *

213 Service Areas

* * * * *

213.2 Destinating Countries and Rate Groups

* * * * *

[Revise the Destinating Countries and Rate Groups table by deleting ''Marshall Islands, Republic of'' and ''Micronesia, Federated States of.'']

* * * * *

230 Priority Mail International

* * * * *

233 Priority Mail International Parcels

* * * * *

233.2 Exclusions

Ordinary indemnity coverage is not paid for:

* * * * *

[Delete item c in its entirety.]

* * * * *

235 Weight and Size Limits

* * * * *

235.23 Exceptional Size Limits

* * * * *

[Revise item b by deleting ''Marshall Islands, Republic of the'', and ''Micronesia, Federated States of'']

* * * * *

240 First-Class Mail International

* * * * *

242 Postage

242.1 Rates

The country-specific rate group designations that apply to First-Class Mail International and M-Bags (see 260) are as follows:

* * * * *

[Revise third bullet, ''Rate Group 3'', by removing the reference to Marshall Islands and Micronesia.]

* * * * *

[Delete sixth bullet, ''Rate Group 6'', in its entirety.]

* * * * *

250 Postcards and Postal Cards

* * * * *

252 Postage Rates and Fees

* * * * *

[Delete item b in its entirety.]

* * * * *

290 Commercial Services

* * * * *

292 International Priority Airmail Service

* * * * *

292.4 Mail Preparation for Individual Items

* * * * *

292.44 Sortation Requirements for IPA

* * * * *

292.442 Presorted Mail

* * * * *

Exhibit 292.442 Foreign Exchange Office and Country Rate Groups

[Revise the Foreign Exchange Office and Country Rate Groups table by deleting ''Marshall Islands, Republic of the'' and ''Micronesia, Federated States of.'']

* * * * *

World Map

[Delete the Republic of the Marshall Islands and the Federated States of Micronesia from map reference M5.]

* * * * *

World Map Index

[Delete references for ''Marshall Islands, Republic of the'' and ''Micronesia, Federated States of'' from the world map index.]

Index of Countries and Localities

[Revise the references for ''Marshall Islands, Republic of the'' and ''Micronesia, Federated States of'' by adding the note ''See DMM 608'' and removing the IMM page number.]

* * * * *

Individual Country Listings

[Delete the individual country listings for the Republic of the Marshall Islands and the Federated States of Micronesia.]

* * * * *

Neva R. Watson,

Attorney, Legislative.

[FR Doc. E7–21486 Filed 10–30–07; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

39 CFR Part 111

Domestic Mail Service Offered to the Republic of the Marshall Islands and Federated States of Micronesia

AGENCY: Postal Service™.

ACTION: Final rule with request for comments.

SUMMARY: This final rule revises the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®), by returning the Republic of the Marshall Islands (RMI) and the Federated States of Micronesia (FSM) to ''mail treated as domestic'' status. Collect on Delivery (COD), Delivery Confirmation, Signature Confirmation, and electronic return receipt options will not be offered to FSM and RMI. Also, Express Mail service will be offered but without a guarantee. This decision was a result of high-level discussions with the RMI and the FSM and consultation with the U.S. Department of State. An additional final rule is being published to remove all references to these countries from the *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM).

DATES: *Effective date:* November 19, 2007. *Comment date:* Submit comments on or before November 14, 2007.

ADDRESSES: Mail or deliver written comments to the Manager, Mailing Standards, United States Postal Service, 475 L'Enfant Plaza, SW., Room 3436, Washington, DC 20260–3436. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at the Postal Service Headquarters Library, 475 L'Enfant Plaza SW., 11th Floor North, Washington, DC 20260–0004.

FOR FURTHER INFORMATION CONTACT: Randall F. Sobol at 808–423–3883.

SUPPLEMENTARY INFORMATION: The Republic of the Marshall Islands (RMI) and the Federated States of Micronesia (FSM) were, from 1947 to 1986, under United States government administration pursuant to the trusteeship provisions of the United Nations Charter. From 1986 to 2003, the United States was party to a treaty of international political association with each of these two emerging nations, designed to bring about their self-government. The Compact of Free Association (CFA), as the treaty was called, included provisions for economic assistance and defense. Its terms included postal and related services and provided for reimbursement to the Postal Service for the costs associated with these services.

In 2000, the General Accounting Office produced a report evaluating the progress made under the CFA. The report, GAO/NSIAD–00–216, Foreign Assistance: U.S. Funds to Two Micronesian Nations Had Little Impact on Economic Development (Report to Congressional Requesters Sept. 2000), concluded that the CFA had not accomplished its goals with regard to economic development. Subsequently, the Compact of Free Association Amendments Act of 2003 ratified an amended and renewed CFA (2003 CFA). The 2003 CFAs again addressed the postal services to be provided to the RMI and the FSM, leaving some services open to further negotiations between the Postal Service and the governments of the RMI and the FSM. The 2003 CFAs called for a phased transition for the RMI and the FSM to move to international status as an office of exchange for mail. The 2003 CFAs will expire in 2024.

On September 15, 2005, the Postal Service published a notice in the **Federal Register** (70 FR 54510) proposing use of the phased international rate schedules for the Republic of the Marshall Islands and the Federated States of Micronesia. The application of international rate schedules to these Freely Associated States was permissible, in conformity with, and in furtherance of the terms of the 2003 CFAs between the United States Government and the governments of the RMI and the FSM.

After considering comments on its proposal to use international postal rates, fees, and mail classifications, on November 23, 2005, the Postal Service published a final rule in the **Federal Register** (70 FR 70976) implementing the use of international published prices and mailing standards.

That notice amended the *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM) to include the RMI and the FSM in most international products and services, and it added them to the individual country listings. At the same time, a phased schedule of international rates was introduced in conformity with the 2003 CFAs, which permits such a change to begin not sooner than 2006 and allows the rates to increase to full international rates over a period of not less than five years. A subsequent article removed all references to these countries from the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM).

The application of international rates to these Freely Associated States had observable effects on the economy and business correspondence of the RMI and the FSM. The Postal Service has considered a number of business solutions to lessen that impact, but none are believed to provide optimal service to the FSM and RMI. Consequently, the Postal Service is reverting mail service to the FSM and RMI to domestic status treatment. This is consistent with the CFAs, since the CFAs do not preclude the continuation of domestic mail service treatment to the FSM and RMI. The Postal Service accordingly is returning the parties and their people to substantially similar position they held prior to the application of the international mail schedule, thereby enabling the governments of the RMI and FSM to continue to pursue appropriate long term solutions without adversely impacting the economies of the parties and the lives of their people.

This final rule amends the final rule published on November 23, 2005. Effective November 19, 2007, the RMI and the FSM will revert to the domestic mail treatment as provided in DMM section 608.2.2. As explained below, the Postal Service will restore the domestic mail treatment offered to its *status quo* prior to the transition to phased international service, with certain exceptions.

As background, prior to the November 2005 change, electronic return receipts, Delivery Confirmation and Signature Confirmation were not offered in the Freely Associated States, including the RMI and FSM, for both inbound and outbound mail. The January 6, 2005, issue of the *Domestic Mail Manual* updated on March 17, 2005, set out these limitations on services in sections 608.2.2 (Mail Treated as Domestic), 503.6.2.1 (Return Receipt, Description), 503.9.2.4 (Delivery Confirmation, Ineligible Matter), and 503.10.2.3 (Signature Confirmation, Ineligible Matter). Thus, these services will continue not to be available to customers in the RMI and the FSM.

The 2003 CFAs (Compacts) signed by the United States government and the governments of the RMI and FSM provide for postal services in Article VI. There, certain additional limits on products and services are provided. The Compacts allow the following services to be provided as negotiated between the Postal Service and the governments of the Freely Associated States: ''Express Mail without a guarantee (EMS); Registered Mail; insured parcel service; recorded delivery and money orders.'' The Compacts further state that ''COD (cash (sic) on delivery) orders will no longer be available.'' In accordance with the terms of these

international agreements, COD service will not be provided.

Further, Express Mail service will be provided for inbound and outbound items, but without a guarantee. This is, however, substantially the same expedited service now offered to the FSM and the RMI. That is, as international destinations, the customers of the RMI and FSM currently receive Express Mail International service, which generally does not provide a guarantee, but which does receive expedited handling over other classes of mail. This handling of the Express Mail without a guarantee will continue to provide a benefit to the customers who choose it.

The Postal Service adopts the following changes to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®), which is incorporated by reference in the *Code of Federal Regulations.* See 39 CFR part 111.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), as follows:

* * * * *

500 Additional Mailing Services

503 Extra Services

* * * * *

6.0 Return Receipt

* * * * *

6.2 Basic Information

6.2.1 Description

[Revise the third sentence in 6.2.1 as follows:]

* * * The electronic option is not available for items mailed to APO and FPO addresses or U.S. territories, possessions, and Freely Associated States listed in 608.2.0. * * *

* * * * *

11.0 Collect on Delivery (COD)

* * * * *

11.2 Basic Information

* * * * *

11.2.6 Ineligible Matter

COD service may not be used for:

* * * * *

[Revise 11.2.6 by adding new item f as follows:]

f. Articles sent to or from the Republic of the Marshall Islands and the Federated States of Micronesia.

* * * * *

600 Basic Standards for All Mailing Services

601 Mailability

* * * * *

9.0 Perishables

* * * * *

9.3 Live Animals

* * * * *

[Revise the heading and text in 9.3.6 as follows:]

9.3.6 Mailed to Pacific Islands

Animals mailed to the Republic of Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia require a permit issued by the government of the destination country.

* * * * *

9.3.8 Other Insects

[Revise the text in the second sentence of 9.3.8 as follows:]

* * * Such insects mailed to the Republic of Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia are also subject to the regulations of the destination country.

* * * * *

608 Postal Information and Resources

* * * * *

2.0 Domestic Mail

* * * * *

2.2 Mail Treated as Domestic

* * * * *

[Revise the list of Freely Associated States in 2.2 by adding the Republic of the Marshall Islands, and the Federated States of Micronesia as follows:]

Marshall Islands, Republic of the
Ebeye Island
Kwajalein Island
Majuro Island
Micronesia, Federated States of
Chuuk (Truk) Island
Kosrae Island
Pohnpei Island
Yap Island
Palau, Republic of
Koror Island

* * * * *

2.4 Customs Forms Required

[Revise the first sentence in 2.4 to add the ZIP Codes of the Republic of the Marshall Islands and the Federated States of Micronesia as follows:]

Regardless of contents, all Priority Mail weighing 16 ounces or more sent from the United States to ZIP Codes 96910–44, 96950–52, 96960, 96970, and 96799, and all Priority Mail sent from these ZIP Codes to the United States, must bear customs Form 2976–A. * * *

* * * * *

An appropriate amendment to 39 CFR part 111 to reflect these changes will be published.

Neva Watson,

Attorney, Legislative.

[FR Doc. E7–21487 Filed 10–30–07; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2007–0459; FRL–8487–6]

Revisions to the California State Implementation Plan, Great Basin Unified Air Pollution Control District and Mojave Desert Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Great Basin Unified Air Pollution Control District (GBUAPCD) and Mojave Desert Air Quality Management District (MDAQMD) portions of the California State Implementation Plan (SIP). These revisions concern particulate matter (PM–10) emissions from wood burning appliances and open outdoor fires. We are approving local rules under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on December 31, 2007 without further notice, unless EPA receives adverse comments by November 30, 2007. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2007–0459, by one of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.
- *E-mail: steckel.andrew@epa.gov.*

• *Mail or deliver:* Andrew Steckel (Air–4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or e-mail. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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.

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

FOR FURTHER INFORMATION CONTACT: Al Petersen, EPA Region IX, (415) 947–4118, *petersen.alfred@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules we are approving with the dates that the rules were amended by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Revised or amended	Submitted
GBUAPCD	405	Exceptions	07/07/05 Revised	10/20/05
GBUAPCD	431	Particulate Matter	12/04/06 Revised	05/08/07
MDAQMD	444	Open Outdoor Fires	09/25/06 Amended	05/08/07

On November 22, 2005, the submittal of GBUAPCD Rule 405 was determined to meet the completeness criteria in 40 CFR part 51 appendix V, which must be met before formal EPA review. On July 23, 2007, the submittal of GBUAPCD Rule 431 and MDAQMD Rule 444 was determined to meet the completeness criteria.

B. Are there other versions of these rules?

A version of GBUAPCD Rule 405 was approved into the SIP on June 6, 1977 (42 FR 28883). EPA has not acted on a version of Rule 405 revised on May 8, 1996 and submitted on August 5, 2002. While we can act only on the most recent version, we have considered the contents of the superseded version.

A version of GBUAPCD Rule 431 was approved into the SIP on June 24, 1996 (61 FR 32341).

MDAQMD was previously comprised of the Riverside County Air District (RCAD) and the San Bernardino County Air District (SBCAD). The versions on which the current MDAQMD Rule 444 are based are RCAD Rule 444, SBCAD Rule 57, and SBCAD Rule 57.1, which were approved into the SIP on September 8, 1978 (43 FR 40011), June 14, 1978 (43 FR 25684), and June 14, 1978 (43 FR 25684), respectively.

C. What are the purposes of the submitted rule revisions?

Section 110(a) of the Clean Air Act (CAA) requires states to submit regulations that control volatile organic compounds, nitrogen oxides, particulate matter, and other air pollutants which harm human health and the environment. These rules were developed as part of local air districts' programs to control these pollutants.

The purposes of the submitted GBUAPCD Rule 405 revisions relative to the SIP rule are as follows:

• (405.preamble): The rule extends the applicability of the listed exceptions to Rule 404–A, Particulate Matter, and Rule 404–B, Oxides of Nitrogen, from the original Rule 400, Ringlemann Chart.

• (405.C,E): The rule deletes the exceptions to open burning regulations for agricultural operations and the use of other agricultural equipment necessary in the growing of crops or raising of fowl or animals.

• (405.F,G,H,I,J): The rule adds exceptions to open burning regulations for (a) the treatment of waste propellants, explosives, and pyrotechnics in open burning/open detonation operations on military bases for operations approved in a burn plan as regulated by SIP Rule 432, (b) burning of materials for special effects in filming or video operations, (c) the disposal of contraband by burning, (d) recreational or ceremonial fires, and (e) a fire set for the purpose of eliminating a public health hazard that cannot be abated by any other practical means.

The purposes of the submitted GBUAPCD Rule 431 revisions relative to the SIP rule are as follows:

• 431.A: The rule is expanded to include communities that are determined by the Board of GBUAPCD to be High Road Dust Areas (HRDA) or High Wood Smoke Areas (HWSA), which contribute to exceedences of state or federal 24-hour PM–2.5 or PM–10 standards. The SIP rule applies only to the Town of Mammoth Lakes.

• 431.B: The rule adds appropriate definitions for HRDA and HWSA in addition to the HRDA and HWSA government agencies that regulate these areas.

• 431.C.5: The rule adds the requirement that a HWSA keep a record of all EPA Phase II certified wood-burning appliances.

• 431.D.3 and 4: The rule adds the requirement to obtain a building permit from the Town of Mammoth Lakes for the installation of all solid fuel burning appliances. Outside the Town of

Mammoth Lakes, the building permit is obtained from the HWSA agency.

• 431.D.5 and E: The rule adds requirements for inspectors for verification of compliance with regulations for installation of new certified solid fuel burning appliances and removal or replacement of non-certified appliances.

• 431.I and J: The rule adds requirements and thresholds for mandatory curtailment and voluntary curtailment of solid fuel combustion in the Town of Mammoth Lakes and HWSA areas.

The purposes of the submitted MDAQMD Rule 444 revisions relative to the SIP rules are as follows:

• 444(A): The rule is revised to apply the District Smoke Management Program to open burning while minimizing smoke impacts to the public.

• 444(B)(13): The rule replaces an ''Approved Burn Plan'' with a ''Smoke Management Plan.''

• 444(C)(1): The rule adds the requirement for all burn projects that are greater than 10 acres or that are estimated to produce more than one ton of particulate matter shall be conducted in accordance with the Smoke Management Program.

• 444(C)(2): The rule adds a list of materials prohibited from open burning.

• 444(C)(3): The rule adds the permission to burn during adverse meteorological conditions in a case where there would be an imminent and substantial economic loss, providing a special permit is obtained from the District and not a local fire agency.

• 444(C)(4): The rule adds the provision for a prescribed burn permittee to obtain from CARB up to 48 hours in advance of the burn day a permissive-burn, marginal-burn, or no-burn forecast.

• 444(C)(6): The rule adds requirements for ignition, stacking, drying, and time of day for open burning, except for prescribed burning.

• 444(C)(7): The rule adds to the list of burning applications with a permit (a) empty containers used for explosives, (b) right-of-way clearance for a public entity or utility, or (c) wood waste.

• 444(C)(9): The rule adds the requirement for a Smoke Management Plan for prescribed burning in (a) Forest Management, (b) Range Improvement, and (c) Wildland Vegetation Management.

• 444(D)(1): The rule deletes the exemptions for (a) open fires in agricultural operations at over 3,000 feet elevation and (b) open fires in agricultural burning at over 6,000 feet elevation.

EPA's technical support document (TSD) has more information about these rules.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

Generally, SIP rules must be enforceable (see section 110(a) of the CAA) and must not relax existing requirements (see sections 110(l) and 193). SIP rules in serious PM–10 nonattainment areas must require for significant sources best available control measures (BACM), including best available control technology (BACT) (see section 189(b)). GBUAPCD regulates a serious PM–10 nonattainment area (see 40 CFR part 81), so GBUAPCD Rules 405 and 431 must fulfill the requirements of BACM/BACT. MDAQMD regulates a moderate PM–10 nonattainment area (see 40 CFR part 81), so MDAQMD Rule 444 must fulfill the requirements of RACM/RACT.

Guidance and policy documents that we used to help evaluate rules consistently include the following:

• *Requirements for Preparation, Adoption, and Submittal of Implementation Plans,* U.S. EPA, 40 CFR part 51.

• *PM–10 Guideline Document* (EPA–452/R–93–008).

• *Technical Information Document for Residential Wood Combustion Best Available Control Measures,* (EPA–450/2–92–002).

• *Minimum BACM/RACM Control Measures for Residential Wood Combustion Rules,* EPA Region IX (August 8, 2007).

B. Do the rules meet the evaluation criteria?

We believe that GBUAPCD Rules 405 and 431 and MDAQMD Rule 444 are consistent with the relevant policy and guidance regarding enforceability, BACM/BACT, RACM/RACT, and SIP relaxations and should be given full approval. The TSD has more information on our evaluation.

C. EPA Recommendations To Further Improve a Rule

The TSD describes an additional rule revision that does not affect EPA's current action but is recommended for the next time the local agency modifies GBAPCD Rule 431.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the CAA, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rule. If we receive adverse comments by November 30, 2007, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on December 31, 2007. This will incorporate the rule into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States,

on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it approves a State rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 31, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: August 22, 2007.

Laura Yoshii,

Acting Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(342)(i)(D) and (c)(350) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(342) * * *

(i) * * *

(D) Great Basin Unified Air Pollution Control District.

(*1*) Rule 405, adopted on September 5, 1974 and revised on July 7, 2005.

* * * * *

(350) New and amended regulations were submitted on May 8, 2007, by the Governor's designee.

(i) Incorporation by reference.

(A) Great Basin Unified Air Pollution Control District.

(*1*) Rule 431, adopted on December 7, 1990 and revised on December 4, 2006.

(B) Mojave Desert Air Quality Management District.

(*1*) Rule 444, adopted on October 8, 1976 and amended on September 25, 2006.

[FR Doc. E7–21318 Filed 10–30–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2007–0368, FRL–8478–5]

Approval and Promulgation of Implementation Plans; New York Emission Statement Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the State Implementation Plan (SIP) revision submitted by the State of New York on July 7, 2006 for the purpose of enhancing an existing Emission Statement Program for stationary sources in New York. The SIP revision consists of amendments to Title 6 of the New York Codes Rules and Regulations, Chapter III, Part 202, Subpart 202–2, Emission Statements. The SIP revision was submitted by New York to satisfy the ozone nonattainment provisions of the Clean Air Act. These provisions require states in which all or part of any ozone nonattainment area is located to submit a revision to its SIP which requires owner/operators of stationary sources of volatile organic compounds (VOC) and oxides of nitrogen (NO_X) to provide the State with a statement, at least annually, of the source's actual emissions of VOC and NO_X.

The Emission Statement SIP revision EPA is approving enhances the reporting requirements for VOC and NO_X and expands the reporting requirement, based on specified emission thresholds, to include carbon monoxide (CO), sulfur dioxides (SO_2), particulate matter measuring 2.5 microns or less ($PM_{2.5}$), particulate matter measuring 10 microns or less (PM_{10}), ammonia (NH_3), lead (Pb) and lead compounds and hazardous air pollutants (HAPS). The intended effect is to obtain improved emissions related data from facilities located in New York, allowing New York to more effectively plan for and attain the national ambient air quality standards (NAAQS). The Emission Statement rule also improves EPA's and the public's access to facility-specific emission related data.

DATES: *Effective Date:* This rule is effective on November 30, 2007.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R02–OAR–2007–0368. All documents in the docket are listed on the *www.regulations.gov* Web site. 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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is 212–637–4249.

FOR FURTHER INFORMATION CONTACT: Raymond K. Forde, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3716, *forde.raymond@epa.gov*.

SUPPLEMENTARY INFORMATION:

The following table of contents describes the format for this section:

I. What Action Is EPA Taking?
II. What Comments Did EPA Receive in Response to Its Proposal?
III. What Role Does This Action Play in the Ozone SIP?
IV. What Are EPA's Conclusions?
V. Statutory and Executive Order Reviews

I. What Action Is EPA Taking?

EPA is approving the State Implementation Plan (SIP) revision submitted by the State of New York on July 7, 2006 for the purpose of enhancing an existing Emission Statement program for stationary sources in New York. The SIP revision consists of amendments to Title 6 of the New York Codes Rules and Regulations (NYCRR), Chapter III, Part 202, Subpart 202–2, Emission Statements (Emission Statement rule).

The SIP revision was submitted by New York to satisfy the ozone nonattainment provisions of the Clean Air Act. These provisions require states in which all or part of any ozone non-attainment area is located to submit a revision to its SIP which requires owner/operators of stationary sources of volatile organic compounds (VOC) and oxides of nitrogen (NO_X) to provide the State with a statement, at least annually, of the source's actual emissions of VOC and NO_X. On July 7, 2006, New York submitted a SIP revision for ozone which included an adopted Emission Statement rule. The regulation amends Title 6 of the NYCRR, Subpart 202–2, Emission Statements, which was originally adopted on July 13, 2004. On April 12, 2005, the New York State Department of Environmental Conservation (NYSDEC) adopted these amendments, which became effective on May 29, 2005. The reader is referred to the proposed rulemaking (July 20, 2007, 72 FR 39773) for further details.

II. What Comments Did EPA Receive in Response to Its Proposal?

EPA received no comments in response to the July 20, 2007 proposed rulemaking action.

III. What Role Does This Action Play in the Ozone SIP?

Emission Statements (Annual Reporting of VOC and NO_X)

Section 182(a)(3)(B)(i) of the Act requires states in which all or part of any ozone non-attainment area is located to submit SIP revisions to EPA by November 15, 1992, which require owner/operators of stationary sources of VOC and NO_X to provide the state with a statement, at least annually, of the source's actual emissions of VOC and NO_X. Sources were to submit the first emission statements to their respective states by November 15, 1993. Pursuant to the Emission Statement Guidance, if the source emits either VOC or NO_X at or above levels for which the State Emission Statement rule requires reporting, the other pollutant (VOC or NO_X) from the same facility should be included in the emission statement, even if the pollutant is emitted at levels below the minimum reporting level.

Section 182(a)(3)(B)(ii) of the Act allows states to waive, with EPA approval, the requirement for an emission statement for classes or categories of sources located in nonattainment areas, which emit less than 25 tons per year of actual plant-wide VOC and NO_X, provided the class or category is included in the base year and periodic inventories and emissions are calculated using emission factors established by EPA (such as those found in EPA publication AP–42) or other methods acceptable to EPA.

Consolidated Emission Reporting Rule (Annual Reporting for All Criteria Pollutants)

In order to consolidate reporting requirements by the states to EPA, on June 10, 2002 (See 67 FR 39602), EPA published the final Consolidated Emissions Reporting Rule (CERR). The purpose of the CERR is to simplify the states' annual reporting, to EPA, of criteria pollutants (VOC, NO_X, SO_2, PM_{10}, $PM_{2.5}$, CO, Pb) for which National Ambient Air Quality Standards (NAAQS) have been established, and annual reporting of NH_3, a precursor pollutant. The CERR also provides options for data collection and exchange, and unified reporting dates for various categories of criteria pollutant emission inventories. The CERR requires states to report annually to EPA on emissions of VOC, NO_X, SO_2, PM_{10}, CO and Pb, for industrial point sources, based on specific emission thresholds. The CERR emissions reports for calendar year 2001 were due on June 1, 2003, and subsequent reports were due every year thereafter (i.e., calendar year 2002 emission inventory due June 1, 2004, etc.). Reporting of $PM_{2.5}$ and NH_3 from point sources was not required until June 2004, for emissions that occurred during calendar year 2002.

IV. What Are EPA's Conclusions?

New York's Emission Statement rule, which requires facilities to report information for the criteria pollutants and the associated precursors mentioned earlier, satisfies the federal emission statement and CERR reporting requirements for major sources. In addition, New York's Emission Statement rule which requires facilities to report information for HAPs, assists the State in satisfying the HAPs reporting requirements for major sources. For EPA's detailed evaluation of New York's Emission Statement rule, the reader is referred to the proposed rulemaking notice (July 20, 2007, 72 FR 39773).

It should be noted that the State's Emission Statement program requires facilities to report individual HAPs that may not be classified as criteria pollutants or precursors to assist the State in air quality planning needs. While EPA recognizes the value of this information, EPA will not take SIP-related enforcement action should a facility not submit this information to the State in an emissions statement because these substances do not cause or exacerbate exceedances of the NAAQS.

EPA has concluded that the New York Emission Statement rule contains the necessary applicability, compliance, enforcement and reporting requirements for an approvable emission statement program. Accordingly, EPA is approving 6 NYCRR, Chapter III, Part 202, Subpart 202–2, Emission Statements, as part of New York's SIP adopted on April 12, 2005 and effective May 29, 2005.

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. 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). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it approves a state program.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 31, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 26, 2007.

Alan J. Steinberg,

Regional Administrator, Region 2.

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

PART 52—[AMENDED]

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

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

Subpart HH—New York

■ 2. Section 52.1670 is amended by adding new paragraph (c)(112) to read as follows:

§ 52.1670 Identification of plans.

* * * * *

(c) * * *

(112) Revisions to the State Implementation Plan submitted on July 7, 2006 by the New York State Department of Environmental Conservation for the purpose of enhancing an existing Emission Statement Program for stationary sources in New York. The SIP revision consists of amendments to Title 6 of the New York Codes Rules and Regulations, Chapter III, Part 202, Subpart 202–2, ''Emission Statements.''

(i) Incorporation by reference:

(A) Part 202, Subpart 202–2, Emission Statements of Title 6 of the New York Codes, Rules and Regulations, effective on May 29, 2005.

(ii) Additional information:

(A) July 7, 2006, letter from Mr. Carl Johnson, Deputy Commissioner, OAWM, NYSDEC, to Mr. Alan Steinberg, RA, EPA Region 2, requesting EPA approval of the amendments to Title 6 of the New York Codes Rules and Regulations, Chapter III, Part 202, Subpart 202–2, Emission Statements.

(B) April 11, 2007, letter from Mr. David Shaw, Director, Division of Air Resources, NYSDEC, to Mr. Raymond Werner, Chief, Air Programs Branch, EPA Region 2.

■ 3. Section 52.1679 is amended by revising under Title 6 the entry for part 202 in the table to read as follows:

§ 52.1679 EPA–approved New York State regulations.

New York State regulation	State effective date	Latest EPA approval date	Comments
Title 6:			

New York State regulation	State effective date	Latest EPA approval date	Comments
* * *	*	* *	* *
Part 202, Emissions Verification:	3/24/79	11/12/81, 46 FR 55690.	
Subpart 202–1, ''Emissions Testing, Sampling and Analytical Determinations''.			
Subpart 202–2, ''Emission Statements''	5/29/2005	10/31/07, [Insert FR page citation].	Section 202–2.3(c)(9) requires facilities to report individual HAPs that may not be classified as criteria pollutants or precursors to assist the State in air quality planning needs. EPA will not take SIP-related enforcement action on these pollutants.
* * *	*	* *	* *

[FR Doc. E7–21241 Filed 10–30–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2007–0227–200722(a); FRL–8488–5]

Approval and Promulgation of Implementation Plans; North Carolina: State Implementation Plan Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the State Implementation Plan (SIP) revisions submitted by the State of North Carolina, through the North Carolina Department of Environment and Natural Resources (NCDENR), on February 8, 2007. The submittal encompasses revisions to NCDENR regulations .0605 ''General Recordkeeping and Reporting Requirements,'' .0927 ''Bulk Gasoline Terminals,'' and .0932 ''Gasoline Truck Tanks and Vapor Collections.'' This action is being taken pursuant to section 110 of the Clean Air Act (CAA). The intended effect of these revisions is to clarify certain provisions and to ensure consistency with the requirements of the CAA.

DATES: This direct final rule is effective December 31, 2007 without further notice, unless EPA receives adverse comment by November 30, 2007. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2007–0227, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: lakeman.sean@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* EPA–R04–OAR–2007–0227, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's 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–R04–OAR–2007–0227. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9043. Mr. Lakeman can also be reached via electronic mail at *lakeman.sean@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Analysis of State's Submittal

The February 8, 2007, submittal revises NCDENR regulation:

.0605 ''General Recordkeeping and Reporting Requirements'' by adding a section to prohibit the falsifying of information and submission of falsified information. The intent of this addition is to aid NCDENR in prosecuting persons who falsify records or submit false records.

.0927 ''Bulk Gasoline Terminals'' by adding details on leak detection, recordkeeping, and requirements for leak repair. The intent of this addition is to standardize procedures used at bulk gasoline terminals to locate, repair, and document leaks of volatile organic compounds (VOC).

.0932 ''Gasoline Truck Tanks and Vapor Collections'' to make corrections, updates, and clarifications. The intent of this revision is to correct the definitions of ''bulk terminal'' and ''bulk gasoline terminal,'' update the pressure standard to correspond to the current Department of Transportation standard, and clarify the requirements for gasoline truck tanks and vapor control systems.

II. Final Action

EPA is approving the aforementioned changes to the North Carolina SIP because they meet the requirements of EPA and the CAA. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective December 31, 2007. without further notice unless the Agency receives adverse comments by November 30, 2007.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on December 31, 2007 and no further action will be taken on the proposed rule. *Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.*

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 31, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: October 19, 2007.

Russell L. Wright, Jr.,

Acting Regional Administrator, Region 4.

■ 40 CFR part 52, is amended as follows:

PART 52—[AMENDED]

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

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

Subpart II—North Carolina

■ 2. In § 52.1770 (c), table 1 is amended under subchapter 2D by revising the entries for ''Sect .0605'', ''Sect .0927'' and ''Sect .0932'' to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

TABLE 1.—EPA-APPROVED NORTH CAROLINA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
Sect .0605	General Recordkeeping and Reporting Requirements.	11/01/06	10/31/07 [Insert first page of publication].	
Sect .0927	Bulk Gasoline Terminals	11/01/06	10/31/07 [Insert first page of publication].	
*	*	*	*	*
Sect .0932	Gasoline Truck Tanks and Vapor Collections.	11/01/06	10/31/07 [Insert first page of publication].	
*	*	*	*	*

* * * * *

[FR Doc. E7–21234 Filed 10–30–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R09–OAR–2007–0916; FRL–8489–6]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Control of Emissions From Existing Other Solid Waste Incinerator Units; NV

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a negative declaration submitted by the Nevada Division of Environmental Protection. The negative declaration certifies that other solid waste incinerator units, subject to the requirements of sections 111(d) and 129 of the Clean Air Act, do not exist within the agency's air pollution control jurisdiction.

DATES: This rule is effective on December 31, 2007 without further notice, unless EPA receives adverse comments by November 30, 2007. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2007–0916, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.
2. *E-mail: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or e-mail. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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.

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

FOR FURTHER INFORMATION CONTACT: Mae Wang, EPA Region IX, (415) 947–4124, *wang.mae@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

Table of Contents

I. Background
II. Final EPA Action
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I. Background

Sections 111(d) and 129 of the Clean Air Act (CAA or the Act) require States to submit plans to control certain pollutants (designated pollutants) at existing solid waste combustor facilities (designated facilities) whenever standards of performance have been established under section 111(b) for new sources of the same type, and EPA has established emission guidelines (EG) for such existing sources. A designated pollutant is any pollutant for which no air quality criteria have been issued, and which is not included on a list published under section 108(a) or section 112(b)(1)(A) of the CAA, but emissions of which are subject to a standard of performance for new stationary sources. However, section 129 of the CAA also requires EPA to promulgate EG for solid waste incineration units that emit a mixture of air pollutants. These pollutants include organics (dioxins/furans), carbon monoxide, metals (cadmium, lead, mercury), acid gases (hydrogen chloride, sulfur dioxide, and nitrogen oxides) and particulate matter (including opacity).

On December 16, 2005, (70 FR 74870), EPA promulgated new source performance standards and EG for other solid waste incineration (OSWI) units, located at 40 CFR part 60, subparts EEEE and FFFF, respectively. The designated facility to which the EG apply is each existing OSWI unit, as defined in subpart FFFF, that commenced construction on or before December 9, 2004.

Subpart B of 40 CFR part 60 establishes procedures to be followed and requirements to be met in the development and submission of State plans for controlling designated pollutants. Also, 40 CFR part 62 provides the procedural framework for the submission of these plans. When designated facilities are located in a State, the State must then develop and submit a plan for the control of the designated pollutant. However, 40 CFR 60.23(b) and 62.06 provide that if there are no existing sources of the designated pollutant in the State, the State may submit a letter of certification to that effect (i.e., negative declaration) in lieu of a plan. The negative declaration exempts the State from the requirements of subpart B for the submittal of a 111(d)/129 plan.

II. Final EPA Action

The Nevada Division of Environmental Protection (NDEP) has determined that there are no designated facilities subject to the OSWI unit EG requirements in its air pollution control jurisdiction. On December 19, 2006, NDEP submitted to EPA a negative declaration letter certifying this fact. EPA is amending 40 CFR part 62, subpart DD (Nevada) to reflect the receipt of this negative declaration letter.

After publication of this **Federal Register** notice, if an OSWI facility is later found within the NDEP jurisdiction, then the overlooked facility will become subject to the requirements of the Federal OSWI 111(d)/129 plan, including the compliance schedule. The Federal plan would no longer apply if EPA were to subsequently receive and approve a 111(d)/129 plan from NDEP.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action simply reflects already existing Federal requirements for State air pollution control agencies under 40 CFR parts 60 and 62. In the Proposed Rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve NDEP's negative declaration should relevant adverse or critical comments be filed.

This rule will be effective December 31, 2007 without further notice unless the Agency receives relevant adverse comments by November 30, 2007. If EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves a State determination as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law.

Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State negative declaration in response to implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it merely approves a State negative declaration in response to implementing a Federal standard.

In reviewing 111(d)/129 plan submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a 111(d)/129 plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a 111(d)/129 plan submission, to use VCS in place of a 111(d)/129 plan submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 31, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving the section 111(d)/129 negative declaration

submitted by NDEP may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Aluminum, Fertilizers, Fluoride, Intergovernmental relations, Paper and paper products industry, Phosphate, Reporting and recordkeeping requirements, Sulfur oxides, Sulfuric acid plants, Waste treatment and disposal.

Dated: September 17, 2007.

Wayne Nastri,

Regional Administrator, Region IX.

■ Part 62, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

■ 1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart DD—Nevada

■ 2. Subpart DD is amended by adding an undesignated center heading and § 62.7140 to read as follows:

Emissions From Existing Other Solid Waste Incineration Units

§ 62.7140 Identification of plan—negative declaration.

Letter from the Nevada Division of Environmental Protection, submitted on December 19, 2006, certifying that there are no existing other solid waste incineration units subject to 40 CFR part 60, subpart FFFF, of this chapter.

[FR Doc. E7–21449 Filed 10–30–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2002–0043; FRL–8151–4]

Pesticide Tolerance Nomenclature Changes; Technical Amendments; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical correction.

SUMMARY: EPA issued a final rule in the **Federal Register** of September 18, 2007 promulgating nomenclature changes for several hundred pesticide tolerances. This document is being issued to remove from the nomenclature changes several items that had been changed previously.

DATES: This final rule is effective November 2, 2007.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2002–0043. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov web site to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Stephen Schaible, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington DC 20460–0001; telephone number: (703) 308–9362; e-mail address: *schaible.stephen@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

The Agency included in the final rule a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under the **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using regulations.gov, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. What Does this Correction Do?

EPA is correcting the nomenclature document issued in the **Federal Register** on September 18, 2007 (72 FR 53134) (FRL–8126–5). Subsequent to publication of the September 18, 2007 **Federal Register** document, EPA learned that in the table of some 600 entries, several of the nomenclature changes had been included in a tolerance regulation that was issued in the **Federal Register** of September 12, 2007, (72 FR 52013), thus making inclusion of those entries unnecessary and confusing. Therefore, EPA is removing the duplicate nomenclature changes that appeared in the September 12, 2007 **Federal Register** tolerance rule from the September 18, 2007 tolerance nomenclature document.

III. Why is this Correction Issued as a Final Rule?

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that, when an Agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the Agency may issue a final rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's technical correction final without prior proposal and opportunity for comment, because this document is merely removing commodity entries that have already been updated. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

IV. Do Any of the Statutory and Executive Order Reviews Apply to this Action?

EPA included the required statutory discussion in the September 18, 2007 nomenclature rule.

V. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: October 23, 2007.

Debra Edwards,

Director, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. In FR Doc. E7–18159 published in the **Federal Register** of September 18, 2007 (72 FR 53134) (FRL–8126–5), in the table to part 180, make the following corrections.

■ a. On page 53137, remove the two entries for §180.103.

■ b. On page 53138, remove all four entries for §180.142.

■ c. On page 53138, remove the entry for §180.185.

■ d. On page 53138, remove the entry for §180.211.

■ e. On page 53138, remove the two entries for §180.213.

■ f. On page 53138, remove all the entries for §180.220.

■ g. On page 53139, remove all the entries for §180.242.

■ h. On page 53139, remove the entry for §180.249.

■ i. On page 53139, remove the entries for §180.298.

■ j. Beginning on the bottom of page 53139, remove all the entries for §180.317.

■ k. On page 53140, remove all the entries for §180.330.

■ l. On page 53140, remove the entry for §180.345.

■ m. On page 53141, remove the two entries for §180.378.

■ n. On page 53141, remove the two entries for §180.381.

■ o. On page 53142, remove all of the entries for §180.418, except the entries for ''Berry, group 13;'' ''Grass, forage, group 17;'' and ''Grass, hay, group 17.''

■ p. On page 53145, remove all the entries for §180.489.

[FR Doc. E7–21471 Filed 10–30–07; 8:45 am]

BILLING CODE 6560–50–S

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 300–1, 300–2, 300–3, 300–70, 301–10, 301–11, 301–12, 301–50, 301–51, 301–52, 301–53, 301–54, 301–70, 301–71, 301–72, 301–73, 301–75, and Chapter 301—Appendices B and D

[FTR Amendment 2007–05; FTR Case 2007–305; Docket 2007–0002, Sequence 4]

RIN 3090–AI39

Federal Travel Regulation; FTR Case 2007–305, Miscellaneous Amendments

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: This final rule updates the Federal Travel Regulation (FTR) by making miscellaneous changes, including editorial changes and corrections. These changes are necessary to improve the accuracy, interpretation, and readability of the FTR.

EFFECTIVE DATE: This final rule is effective October 31, 2007.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, Room 4035, GSA Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Umeki Gray Thorne, Office of Governmentwide Policy, (MTT), at (202) 208–7636. Please cite FTR Amendment 2007-05.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the Federal Travel Regulation (FTR) by:

1. Updating and correcting agency and office titles and acronyms;
2. Making several editorial and grammatical changes, and clarifying areas of existing policy where needed.
3. Replacing the term ''eTravel Service'' with ''E-Gov Travel Service'' wherever it appears.
4. Replacing ''Federal Premier Lodging Program'' and ''FPLP'' with ''FedRooms'' wherever it appear.
5. Replacing references to ''Military Traffic Management Command (MTMC)'' with ''Surface Deployment and Distribution Command (SDDC)'' wherever it appears.
6. Replacing ''Travel Management System'' with ''Travel Management Service'' wherever it appears.
7. Replacing ''General Accounting Office'' with ''Government Accountability Office'' wherever it appears.
8. Replacing ''eTravel Program Management Office'' with ''E-Gov Travel Program Management Office'' wherever it appears.
9. Adding to the category of miscellaneous expense reimbursements, under passport and/or visa fees, the reimbursement of fees incurred by a required physical examination for foreign travel.
10. Removing the acronym ''GEBAT'' in Section 301–51.100 and Appendix D to Chapter 301.
11. Adding changes to authority citations to be consistent with the codification of Title 40 of the United States Code.
12. Adding a term and definition for ''Subsistence Allowance''.
13. Clarifying that lodging taxes for United States locations are not included in the per diem allowance.
14. Amending helpful do's and don'ts for Government contractor-issued travel cardholders.
15. Amending Chapter 301–Appendices B and D, in accordance with the above changes.

B. Executive Order 12866

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.

C. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment therefore, the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FTR do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Parts 300–1, 300–2, 300–3, 300–70, 301–10, 301–11, 301–12, 301–50, 301–51, 301–52, 301–53, 301–54, 301–70, 301–71, 301–72, 301–73, 301–75, and Chapter 301–Appendices B and D

Government employees, Travel and transportation expenses.

Dated: September 13, 2007.

Lurita Doan,

Administrator of General Services.

■ For the reasons set forth in the preamble, under 5 U.S.C. 5701–5709, GSA amends 41 CFR parts 300–1, 300–2, 300–3, 300–70, 301–10, 301–11, 301–12, 301–50, 301–51, 301–52, 301–53, 301–54, 301–70, 301–71, 301–72, 301–73, 301–75, and Chapter 301–Appendices B and D to read as follows:

PART 300–1—THE FEDERAL TRAVEL REGULATION (FTR)

■ 1. The authority citation for 41 CFR part 300–1 is revised to read as follows:

Authority: 5 U.S.C. 5707; 5 U.S.C. 5738; 5 U.S.C. 5741–5742; 20 U.S.C. 905(a); 31 U.S.C. 1353; 40 U.S.C. 121(c); 49 U.S.C. 40118; E.O. 11609, 3 CFR, 1971–1975 Comp., p. 586.

PART 300–2—HOW TO USE THE FTR

■ 2. The authority citation for 41 CFR part 300–2 is revised to read as follows:

Authority: 5 U.S.C. 5707; 5 U.S.C. 5738; 5 U.S.C. 5741–5742; 20 U.S.C. 905(a); 31 U.S.C. 1353; 40 U.S.C. 121(c); 49 U.S.C. 40118; E.O. 11609, 3 CFR, 1971–1975 Comp., p. 586.

PART 300–3—GLOSSARY OF TERMS

■ 3. The authority citation for 41 CFR part 300–3 is amended by inserting a period at the end of the citation to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 121(c); 49 U.S.C. 40118; 5 U.S.C. 5738; 5 U.S.C. 5741–5742; 20 U.S.C. 905(a); 31 U.S.C. 1353; E.O. 11609; 36 FR 13747; 3 CFR, 1971–1975 Comp., p. 586, Office of Management and Budget Circular No. A–126, ''Improving the Management and Use of Government Aircraft.'' Revised May 22, 1992.

■ 4. Amend § 300–3.1 by—

■ a. Removing in the definition of ''Agency'', paragraph (1), the words ''General Accounting Office'' and adding ''Government Accountability Office'' in its place;

■ b. Removing the definition title ''*eTravel Service (eTS)*'' and adding ''*E-Gov Travel Service (ETS)*'' in its place;

■ c. Adding in the definition of ''Household Goods (HHG)'', paragraph (1)(v) a parenthesis after ''trailers)'', and by removing ''that can fit into a moving van'';

■ d. Amend the definition of ''*Per diem allowance*'', by revising the last sentence in the introductory text and paragraph (a); and in paragraph (c)(2) by removing ''can'' and adding ''cannot'' in its place; and

■ e. Adding, in alphabetical order, the definition ''Subsistence Expenses''.

The revised text reads as follows:

§ 300–3.1 What do the following terms mean?

* * * * *

Per diem allowance * * *

The per diem allowance covers all charges and services, including any service charges where applicable. Lodging taxes in the United States are excluded from the per diem allowance and are reimbursed as a miscellaneous expense. In foreign locations, lodging taxes are part of the per diem allowance and are not a miscellaneous expense. The per diem allowance covers the following:

(a) *Lodging*. Includes expenses, except lodging taxes in the United States, for overnight sleeping facilities, baths, personal use of the room during daytime, telephone access fee, and service charges for fans, air conditioners, heaters and fires furnished in the room when such charges are not included in the room rate.

* * * * *

Subsistence Expenses - Expenses such as:

(a) Lodging and service charges;

(b) Meals, including taxes and tips; and

(c) Incidental expenses (see incidental expenses under the definition of per diem allowance).

* * * * *

PART 300–70—AGENCY REPORTING REQUIREMENTS

■ 5. The authority citation for 41 CFR part 300–70 is revised to read as follows:

Authority: 5 U.S.C. 5707; 5 U.S.C. 5738; 5 U.S.C. 5741–5742; 20 U.S.C. 905(a); 31 U.S.C. 1353; 40 U.S.C. 121(c); 49 U.S.C. 40118; E.O. 11609, 3 CFR, 1971–1975 Comp.,p. 586.

§ § 300–70.1 and 300–70.3 [Amended]

■ 6. Amend § § 300–70.1 and 300–70.3 by removing ''and Transportation'' in the last sentence after ''Travel'', respectively.

PART 301–10—TRANSPORTATION EXPENSES

■ 7. The authority citation for 41 CFR part 301–10 is revised to read as follows:

Authority: 5 U.S.C. 5707, 40 U.S.C. 121(c); 49 U.S.C. 40118, Office of Management and Budget Circular No. A–126, ''Improving the Management and Use of Government Aircraft.'' Revised April 28, 2006.

§ 301–10.105 [Amended]

■ 8. Amend § 301–10.105(c), by removing ''or (ship)'' wherever it appears and adding ''(or ship)'' in its place.

§ 301–10.107 [Amended]

■ 9. Amend § 301–10.107, Note 1, by removing ''system'' and adding ''service'', in its place.

§ 301–10.123 [Amended]

■ 10. Amend § 301–10.123(b), second sentence, by removing ''in writing'' and adding ''annually in a written statement'' in its place.

§ 301–10.138 [Amended]

■ 11. Amend § 301–10.138(b)(3) by removing ''can not'' and adding ''cannot'', in its place.

PART 301–11—PER DIEM EXPENSES

■ 12. The authority citation for 41 CFR part 301–11 continues to read as follows:

Authority: 5 U.S.C. 5707.

§ 301–11.6 [Amended]

■ 13. Amend § 301–11.6 by—

■ a. Removing, in the table, entry (b), in the third column, ''*http://www.dtic.mil/perdiem*'' and adding ''*https://secureapp2.hqda.pentagon.mil/perdiem/perdiemrates.html*'' in its place; and

■ b. Adding, in the table, entry (c), in the third column, ''and available on the Internet at *www.state.gov*'' after ''Areas)''.

§ 301–11.11 [Amended]

■ 14. Amend § 301–11.11 by removing ''system'' and adding ''service'' in its place.

§ 301–11.15 [Amended]

■ 15. Amend § 301–11.15(a), by adding ''rental'' before ''cost of appropriate''.

§ 301–11.18 [Amended]

■ 16. Amend § 301–11.18, in the first sentence, by removing ''Your'' and adding ''Except as provided in § 301–11.17, your'' in its place.

§ 301–11.21 [Amended]

■ 17. Amend § 301–11.21(b), by removing ''of'' and adding ''or'' in its place.

■ 18. Revise the last sentence in § 301–11.29 to read as follows:

§ 301–11.29 Are lodging facilities required to accept a generic federal, state, or local tax exempt certificate?

* * * The GSA Per Diem Rates webpage (*http://gsa.gov/perdiem*) provides more information on State tax exemptions.

§ 301–11.102 [Amended]

■ 19. Amend § 301–11.102, in the table, in the third column, by revising the first entry under the heading ‘‘ Your applicable M&IE rate is’’ to read as follows.

FOR DAYS OF TRAVEL WHICH	YOUR APPLICABLE M&IE RATE IS
* * *	The M&IE rate applicable for the TDY location or stopover point.
* * * * *	* * * * *

* * * * *

PART 301–12—MISCELLANEOUS EXPENSES

■ 20. The authority citation for 41 CFR part 301–12 continues to read as follows:

Authority: 5 U.S.C. 5707.

§ 301–12.1 [Amended]

■ 21. Amend § 301–12.1, in the table, in the third column, by revising the entry under the heading ‘‘Special expenses of foreign travel’’, second entry, to read as follows:

General expenses	Fees to obtain money	Special expenses of foreign travel
* * * * *	* * * * *	* * * * *
.....	.....	Passport and/or visa fees, including fees for a physical examination if one is required to obtain a passport and/or visa and such examination could not be obtained at a Government facility. Reimbursement for such fees may include travel and transportation costs to the passport/visa issuing office if located outside the local commuting area of the employee's official duty station and the traveler's presence at that office is mandatory.
.....	.....	* * * * *

PART 301–50—ARRANGING FOR TRAVEL SERVICES

■ 22. The authority citation for 41 CFR part 301–50 continues to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 121(c).

§ 301–50.3 [Amended]

■ 23. Amend § 301–50.3, by removing ‘‘System’’ and adding ‘‘Service’’ in its place.

§ 301–50.8 [Amended]

■ 24. Amend § 301–50.8 by—

■ a. Adding in paragraph (b)(1), ‘‘(the Act)’’ after ‘‘1990’’;

■ b. Revising paragraph (b)(2) introductory text;

■ c. Removing in paragraph (b)(2)(i), in the first sentence, ‘‘under contract’’; and removing ‘‘eTS’’ and adding ‘‘ETS’’ in its place;

■ d. Removing in paragraphs (b)(2)(i), in three places; and (b)(2)(ii), ‘‘FPLP’’ and adding ‘‘FedRooms’’ in its place; and

■ e. Removing in paragraph (c), in the first sentence, ‘‘Military Traffic Management Command (MTMC)’’ and adding ‘‘Surface Deployment and Distribution Command (SDDC)’’ in its place; and in the last sentence, removing ‘‘MTMC’’ and adding ‘‘SDDC’’in its place.

The revised text reads as follows:

§ 301–50.8 Are there any limits on travel arrangements I may make?

* * * * *

(b) * * *

(2) When selecting a commercial lodging facility, first consideration must be given to the commercial lodging facilities under FedRooms (FedRooms may be found on the Internet at *http://www.fedrooms.gov*), all of which meet fire safety requirements, unless one or more of the following conditions exist:

* * * * *

§§ 301–50.3, 301–50.5, and 301–50.8 [Amended]

■ 25. In addition to the amendments set forth above, in 41 CFR part 301–50, remove the words ‘‘eTravel Service’’ and add, in their place, the words ‘‘E-Gov Travel Service’’ in the following places:

(a) § 301–50.3;

(b) § 301–50.5 heading and section text; and

(c) § 301–50.8(b)(2)(i)

PART 301–51—PAYING TRAVEL EXPENSES

■ 26. The authority citation for 41 CFR part 301–51 is revised to read as follows:

Authority: 5 U.S.C. 5707. Subpart A is issued under the authority of Sec. 2, Pub. L.

105–264, 112 Stat. 2350 (5 U.S.C. 5701 note); 40 U.S.C. 121(c).

§ 301–51.100 [Amended]

■ 27. Amend § 301–51.100, in the table, by—

■ a. Removing, in the second column, under the heading ''You must use'', under the first entry, ''card, centrally'' and adding ''card or centrally'' in its place; and removing '', or'' at the end of the sentence; and

■ b. Revising, in the third column, under the first entry under the heading ''Unless''.

The revised text reads as follows:

For passenger transportation services costing	You must use	Unless
* * *	* * *	Use of the Government contractor-issued individually billed travel card is not accepted, its use is impracticable or special circumstances justify the use of a GTR.
* * * * *	* * * * *	* * * * *

PART 301–52—CLAIMING REIMBURSEMENT

■ 28. The authority citation for 41 CFR part 301–52 continues to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 121(c); Sec.2., Pub. L. 105–264, 112 Stat. 2350 (5 U.S.C. 5701 note).

§ 301–52.3 [Amended]

■ 29. Amend § 301–52.3 by removing ''eTravel Service'' and add ''E-Gov Travel Service''; and removing ''eTS'' and add ''ETS'' in their places, respectively.

§ 301–52.4 [Amended]

■ 30. Amend § 301–52.4, paragraph (b)(3) by—

■ a. Removing '' *http://ardor.nara.gov/grs/grs06.html*'' and add ''*http://www.archives.gov/records-mgmt/ardor/grs06.html*'' in its place; and

■ b. Removing ''paragraph 1'' and add ''paragraph number 1'' in its place.

PART 301–53—USING PROMOTIONAL MATERIALS AND FREQUENT TRAVELER PROGRAMS

■ 31. The authority citation for 41 CFR part 301–53 continues to read as follows:

Authority: Authority: 5 U.S.C. 5707; 31 U.S.C. 1353.

§ 301–53.4 [Amended]

■ 32. Amend § 301–53.4, in the third sentence, by removing ''systems'' and adding ''services'' in its place.

§ 301–53.5 [Amended]

■ 33. Amend § 301–53.5 in the heading and text by removing ''system'' and adding ''service'' in its place.

PART 301–54—COLLECTION OF UNDISPUTED DELINQUENT AMOUNTS OWED TO THE CONTRACTOR ISSUING THE INDIVIDUALLY BILLED TRAVEL CHARGE CARD

■ 34. The authority citation for part 301–54 is revised to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 121(c); Sec. 2, Pub. L. 105–264, 112 Stat. 2350 (5 U.S.C. 5701 note).

PART 301–70—INTERNAL POLICY AND PROCEDURE REQUIREMENTS

■ 35. The authority citation for 41 CFR part 301–70 is revised to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 121(c); Sec 2, Pub. L. 105–264, 112 Stat. 2350 (5 U.S.C. 5701 note), Office of Management and Budget Circular No. A–126, ''Improving the Management and Use of Government Aircraft,'' revised May 22, 1992, and OMB Circular No. A–123, Appendix B, ''Improving the Management of Government Charge Card Programs,'' revised April 2006.

§ 301–70.1 [Amended]

■ 36. Amend § 301–70.1(d) by removing ''eTS'' and adding ''ETS'', two times, in its place.

§ 301–70.701 [Amended]

■ 37. Amend § 301–70.701(a)(3), by removing ''Transportation'' and adding ''Homeland Security'' in its place.

■ 38. Amend § 301–70.708(a) by revising the web site address and by revising paragraph (j) to read as follows:

§ 301–70.708 What can we do to reduce travel charge card delinquencies?

* * * * *

(a) * * * *http://www.gsa.gov/traveltraining*.

* * * * *

(j) For some helpful do's and don'ts for travel cardholders, see GSA publication (Card-F001) entitled ''Helpful Hints for Travel Cardholders''. This publication is available on the Internet at *http://fss.gsa.gov/services/gsa-smartpay*. Click on ''Publications and Presentations'' and under ''Publications,'' click on ''Helpful Hints for Travel Card Use''.

* * * * *

PART 301–71—AGENCY TRAVEL ACCOUNTABILITY REQUIREMENTS

■ 39. The authority citation for 41 CFR part 301–71 is revised to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 121(c); Sec. 2, Pub. L. 105–264, 112 Stat. 2350 (5 U.S.C. 5701 note).

§ 301–71.105 [Amended]

■ 40. Amend § 301–71.105(i), by adding ''a'' after ''of''.

§ 301–71.106 [Amended]

■ 41. Amend § 301–71.106, in the table, under the heading ''The appropriate official to sign a trip-by-trip authorization is'', in the third entry, by removing ''part 304'' and adding ''Chapter 304'' in its place.

§ 301–71.200 [Amended]

■ 42. Amend § 301–71.200 by removing the comma after the closed parenthesis.

§ 301–71.309 [Amended]

■ 43. Amend § 301–71.309 by removing the words ''Accounting '' wherever it appears and adding ''Accountability'' and ''General'' wherever it appears and adding ''Government'' in its place.

PART 301–72—AGENCY RESPONSIBILITIES RELATED TO COMMON CARRIER TRANSPORTATION

■ 44. The authority citation for part 301–72 is revised to read as follows:

Authority: 5 U.S.C. 5707; 31 U.S.C. 3726; 40 U.S.C. 121(c).

§ 301–72.203 [Amended]

■ 45. Amend § 301–72.203 by adding a comma after ''e.g.'', in two places.

PART 301–73—TRAVEL PROGRAMS

■ 46. The authority citation for 41 CFR part 301–73 continues to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 121(c).

§ 301–73.1 [Amended]

■ 47. Amend § 301–73.1(d), by removing the words ''Federal Premier Lodging Program (FPLP)'' and add ''FedRooms'', in its place.

§ 301–73.2 [Amended]

■ 48. Amend § 301–73.2(c), by removing the words ''eTravel Program Management Office'' and add ''E-Gov Travel Program Management Office'', in its place.

§ 301–73.104 [Amended]

■ 49. Amend § 301–73.104(a)(1), by removing the words ''Travel Management System'' and add ''Travel Management Service'', in its place.

§ 301–73.106 [Amended]

■ 50. Amend § 301–73.106 by—

■ a. Removing in paragraph (a)(2), the words ''Federal Premier Lodging Program'' and add ''FedRooms'', in its place.; and

■ b. Removing in paragraph (a)(3), the words ''Military Traffic Management Command (MTMC)'' and adding ''Surface Deployment and Distribution Command (SDDC)'' in its place.

§§ 301–73.1 through 301–73.106 [Amended]

■ 51. In addition to the amendments set forth above, in 41 CFR part 301–73 remove the words ''eTravel Service'' and add, in their place, the words ''E-Gov Travel Service'' in the following places:

(a) Note to § 301–73.1;
(b) § 301–73.100, section heading;
(c) § 301–73.103, section heading;
(d) § 301–73.104, section heading; and
(e) § 301–73.105, section heading.

■ 52. In addition to the amendments set forth above, in 41 CFR part 301–73 remove the word ''eTS'' and add, in their place, the word ''ETS'' in the following places:

(a) Note to § 301–73.1;
(b) § 301–73.2(a); (b), two times; (c); (d); (e);
(c) § 301–73.100, five times;
(d) Note to § 301–73.100, five times;
(e) § 301–73.103;
(f) § 301–73.104(a); (a)(1), two times; (a)(2); (a)(3); (a)(4);
(g) § 301–73.105, two times;
(h) § 301–73.106, section heading; and
(i) Note to § 301–73.106, three times.

PART 301–75—PRE-EMPLOYMENT INTERVIEW TRAVEL

■ 53. The authority citation for 41 CFR part 301–75 continues to read as follows:

Authority: 5 U.S.C. 5707.

§ 301–75.4 [Amended]

■ 54. Amend § 301–75.4, paragraph (f), by removing ''18 U.S.C. 287 and 1001.'' and adding ''(See 18 U.S.C. 287 and 1001).'' in its place.

PART 301–76—COLLECTION OF UNDISPUTED DELINQUENT AMOUNTS OWED TO THE CONTRACTOR ISSUING THE INDIVIDUALLY BILLED TRAVEL CHARGE CARD

■ 55. The authority citation for 41 CFR part 301–76 is revised to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 121(c); Sec. 2, Pub. L. 105–264, 112 Stat. 2350 (5 U.S.C. 5701 note).

■ 56. Amend Appendix B to Chapter 301 by revising the introductory paragraph to read as follows:

Appendix B to Chapter 301—Allocation of M&IE Rates To Be Used in Making Deductions From the M&IE Allowance

Deductions to M&IE rates for localities in both nonforeign areas and foreign areas shall be allocated as shown in this table. For information as to where to access per diem rates for various types of Government travel, please consult the table in § 301–11.6.

* * * * *

■ 57. Amend Appendix D to Chapter 301 by removing the acronym ''GEBAT'' and alphabetically adding or changing the following acronyms to read as follows:

Appendix D to Chapter 301—Glossary of Acronyms

* * * * *

CAS: Commercial Aviation Service(s)
CDW: Collision Damage Waiver

* * * * *

CTO: Commercial Ticket Office

* * * * *

ETS: E-Gov Travel Service(s)
FAA: Federal Aviation Administration

* * * * *

FECA: Federal Employees' Compensation Act
Fedrooms: Enhanced Federal Premier Lodging Program (formally known as FPLP)

* * * * *

FICA: Federal Insurance Contribution Act

* * * * *

HHG: Household Goods

* * * * *

ISSA: Inter-service Support Agreement(s)
ITRA: Income Tax Reimbursement Allowance

* * * * *

MARS: Military Affiliate Radio System

* * * * *

NARA: National Archives and Records Administration

* * * * *

NTE: Not to Exceed
OBE: Online Self-service Booking Tool

* * * * *

PBP&E: Professional Books, Papers, and Equipment

* * * * *

PMO: E-Gov Travel Program Management Office

* * * * *

SDDC: Surface Deployment and Distribution Command

* * * * *

SIT: Storage in Transit

* * * * *

TMS: Travel Management Service

* * * * *

U.S.: United States

* * * * *

[FR Doc. E7–21254 Filed 10–30–07; 8:45 am]

BILLING CODE 6820–14–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 488

[CMS–2278–IFC]

RIN 0938–AP22

Revisit User Fee Program for Medicare Survey and Certification Activities

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

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule with comment period implements the continuation of the revisit user fee program for Medicare Survey and Certification activities, in accordance with the statutory authority in the Continuing Appropriations Resolution (''Continuing Resolution'') budget legislation passed by the Congress and signed by the President on September 29, 2007. On September 19, 2007, we published a final rule that established a system of revisit user fees applicable to health care facilities that have been cited for deficiencies during initial certification, recertification or substantiated complaint surveys and require a revisit to confirm that

corrections to previously-identified deficiencies have been corrected.

DATES: *Effective date:* These regulations are effective October 1, 2007.

Comment date: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on December 31, 2007.

ADDRESSES: In commenting, please refer to file code CMS–2278–IFC. Because of staff and resource limitations, we cannot accept comments by facsimile (Fax) transmission.

You may submit comments in one of four ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to *http://www.cms.hhs.gov/eRulemaking.* Click on the link ''Submit electronic comments on CMS regulations with an open comment period.'' (Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.)

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2278–IFC, P.O. Box 8010, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments (one original and two copies) to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2278–IFC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members. Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Kathryn Linstromberg, (410) 786–8279.

SUPPLEMENTARY INFORMATION:

Submitting Comments: As the public was provided an opportunity to comment on the substance of the rule during the comment period prior to the publication of the September 19, 2007 final rule, and as the substance of the rule is not changed by this interim final rule with comment period, we are accepting comments only to the extent that they pertain to the applicability of the new authority for the rule. You can assist us by referencing the file code CMS–2278–IFC.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.cms.hhs.gov/eRulemaking.* Click on the link ''Electronic Comments on CMS Regulations'' on that Web site to view public comments.

Comments received timely will be also available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

SUPPLEMENTARY INFORMATION:

I. Background

In the June 29, 2007 **Federal Register** (72 FR 35673), we published the proposed rule entitled, ''Establishment of Revisit User Fee Program for Medicare Survey and Certification Activities'' and provided for a 60-day comment period. In the September 19, 2007 **Federal Register** (72 FR 53628) we published the Revisit User Fee Program final rule. That final rule set forth final requirements and a final fee schedule for providers and suppliers who require a revisit survey as a result of deficiencies cited during an initial certification, recertification, or substantiated complaint survey.

The Centers for Medicare & Medicaid Services (CMS) has in place an outcome-oriented survey process that is designed to determine whether existing Medicare-certified providers and suppliers or providers and suppliers seeking initial Medicare certification are actually meeting statutory and regulatory requirements, conditions of participation, or conditions for coverage. These health and safety requirements apply to the environments of care and the delivery of services to residents or patients served by these facilities and agencies. The Secretary of the Department of Health and Human Services (HHS) has designated CMS to enforce the conditions of participation/coverage and other requirements of the Medicare program. The revisit user fee will be assessed for revisits conducted in order to determine whether deficiencies cited as a result of failing to satisfy federal quality of care requirements have been corrected.

Pursuant to the requirements of the Continuing Appropriations Resolution budget bill for fiscal year (FY) 2007, which was passed by the Congress and signed by the President, we were directed by the Secretary to implement the revisit user fees for FY 2007 for certain providers and suppliers for which a revisit was required to confirm that previously-identified failures to meet federal quality of care requirements had been remedied. The fees recover the costs associated with the Medicare Survey and Certification program's revisit surveys. The primary purpose for implementing the revisit user fees is to ensure the continuance of CMS Survey and Certification quality assurance functions that improve patient care and safety. The fees became effective upon publication September 19, 2007, when the final rule was published.

II. Provisions of the Interim Final Rule

The current Continuing Resolution (Pub. L. 110–92, H. J. Res. 52 §§ 101 & 106(2007)) authorizes HHS to continue the revisit user fees until November 16, 2007, as follows:

* * *

Sec. 101. Such amounts as may be necessary, at a rate for operations as provided in the applicable appropriations Acts for fiscal year 2007 and under the authority and conditions provided in such Acts, for continuing projects or activities (including the costs of direct loans and loan guarantees) that are not otherwise specifically provided for in this joint resolution, that were

conducted in fiscal year 2007, and for which appropriations, funds, or other authority were made available in the following appropriations Acts:

* * *

(3) The Continuing Appropriations Resolution, 2007 (division B of Public Law 109–289, as amended by Pub. L. 110–5). (*H.J. Res. 20, § 101(2007)).*

Sec. 106. Unless otherwise provided for in this joint resolution or in the applicable appropriations Act for fiscal year 2008, appropriations and funds made available and authority granted pursuant to this joint resolution shall be available until whichever of the following first occurs:

* * *

(3) November 16, 2007.

As directed by the Secretary, in the September 19, 2007 **Federal Register** (72 FR 53628), we established revisit user fees for revisit surveys and put forth in regulation the definitions, criteria for determining the fee, the fee schedule, collection of fees, reconsideration process for revisit user fees, enforcement and regulatory language addressing enrollment and billing privileges, and provider agreements. In the September 19, 2007 final rule, cost projections were based on FY 2006 actual data and were expected to amount to $37.3 million on an annual basis for FY 2007. These calculations were included in section IV of the final rule (72 FR 53642).

We stated in the final rule that, ''if authority for the revisit user fee is continued, we will use the current fee schedule in [the final rule] for the assessment of such fees until such time as a new fee schedule notice is proposed and published in final form.'' (72 FR 53628). The current Continuing Resolution continues the authority of the FY 2007 Continuing Resolution from October 1, 2007 through November 16, 2007. Accordingly, the revisit fees will continue to be assessed for the entire time period authorized by the current Continuing Resolution.

III. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

IV. Waiver of Proposed Rulemaking and Delay in Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule in accordance with *5 U.S.C. section 553*(b) of the Administrative Procedure Act (APA). The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substances of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued. We find that the notice-and-comment procedure is unnecessary in this circumstance because providers and suppliers have already been provided notice and an opportunity to comment on the substance of this rule. This interim final rule with comment merely updates the Congressional authority under which the rule operates.

Therefore, we find good cause to waive the notice of proposed rulemaking and to issue this final rule on an interim basis. We are providing a 60-day public comment period.

We ordinarily provide a 30-day delay in the effective date of the provisions of a rule in accordance with the Administrative Procedure Act (APA) 5 U.S.C. 553(d). However, the delay in the effective date may be waived as, in pertinent part, ''provided by the agency for good cause found and published with the rule'' 5 U.S.C. 553(d)(3). The Secretary finds that good cause exists to waive the 30-day effective date delay.

The good cause exception to the 30 day effective date delay provision of section 553(d) of the APA is read to be broader than the good cause exception to the notice and comment provision of section 553(b)of the APA.

The legislative history of the APA indicates that the purpose for deferring the effectiveness of a rule under section 553(d) was to ''afford persons affected a reasonable time to prepare for the effective date of a rule or rules or to take other action which the issuance may prompt.'' S. Rep. No. 752, 79th Cong., 1st Sess. 15 (1946); H.R. Rep. No. 1980, 79th Cong. 2d Sess. 25 (1946). In this case, affected parties do not need time to adjust their behavior before this rule takes effect. This rule merely updates the authority under which the revisit fee is assessed and does not provide any additional requirements for the affected parties. Moreover, with or without a revisit fee, a provider or supplier must be found to have corrected significant deficiencies in order to avoid termination. Additionally, the application of a fee for the revisit does not place appreciable administrative burdens on the affected providers or suppliers. We do not expect appreciable cost to State survey agencies because we are undertaking the billing and collection of the revisit user fee.

We identified in the proposed rule the immediacy of this revisit user fee program and the limited nature of FY 2007, Continuing Resolution Appropriation (Pub. L. 110–5). Specifically, the Continuing Resolution required us to implement the revisit fee program in FY 2007. Accordingly, providers and suppliers have been on notice for some time that these fees will be imposed, and do not need additional time to be prepared to comply with the requirements of this regulation. We believe that given the short timeframe that we have to collect fees before the statutory authority of the current Continuing Resolution expires, there is good cause to waive the 30-day effective date.

V. Collection of Information Requirements

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

VI. Regulatory Impact Analysis

A. Overall Impact

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

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any one year). This rule is not a major rule. The aggregate costs will total approximately $37.3 million in any one year.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA,

small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Individuals and States are not included in the definition of a small entity. Small businesses are small entities, either by nonprofit status or by having revenues of $6.5 million to $31.9 million or less in any one year for purposes of the RFA. The September 19, 2007 final rule provided an analysis on the impact of small entities (72 FR 53642–3). The analysis published in the final rule remains valid. Since this interim final rule with comment merely updates the Congressional authority under which the rule operates, we have determined, and the Secretary certifies, that this rule will not have a significant impact on small entities based on the overall effect on revenues.

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan statistical Area (superseded by Core Based Statistical Areas) and has fewer than 100 beds. This rule affects those small rural hospitals that have been cited for a deficiency based on noncompliance with required conditions of participation and for which a revisit is needed to make sure that the deficiency has been corrected. We identified in the September 19, 2007 final rule that for the effective period of that rule that less than 3 percent of all hospitals may be assessed a revisit user fee and that less than 1 percent of those hospitals would be rural hospitals (72 FR 53643). The analysis published in the final rule remains valid. Since this interim final rule with comment merely updates the Congressional authority under which the rule operates, we maintain that given the effective period of this rule, we have determined, and the Secretary certifies, that this rule will not have a significant impact on small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any one year of $100 million in 1995 dollars, updated annually for inflation. That threshold level is currently approximately $120 million. This interim final rule with comment will have no mandated effect on State, local, or tribal governments and the impact on the private sector is estimated to be less than $120 million and will only affect those Medicare providers or suppliers for which a revisit user fee is assessed based on the need to conduct a revisit survey to ensure deficient practices that were cited have been corrected.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This interim final rule with comment will not substantially affect State or local governments. This rule establishes user fees for providers and suppliers for which CMS has identified deficient practices and requires a revisit to assure that corrections have been made. Therefore, we have determined that this interim final rule with comment will not have a significant effect on the rights, roles, and responsibilities of State or local governments.

B. Impact on Providers/Suppliers

There is no change on the impact on providers and suppliers with the publication of this interim final rule with comment. The impact remains as discussed in the final rule (72 FR 53643).

Final Fee Schedule for Onsite and Offsite Revisit Surveys

The FY 2007 fee schedule published on September 19, 2007 (72 FR 53647) in the final rule will be retained. As noted in the final rule, the published fee schedule will be utilized by CMS for the assessment of such fees until such time as a new fee schedule notice is proposed and published in final form. The calculations utilized to determine the fee as identified in the final rule will be the same (72 FR 53645–6). We will continue to assess a flat fee based on provider or supplier type and type of revisit survey conducted. Table A below identifies the final fee schedule.

TABLE A.—FINAL FEE SCHEDULE

Facility	Fee assessed per offsite revisit survey	Fee assessed per onsite revisit survey
SNF & NF	$168	$2,072
Hospitals	168	2,554
HHA	168	1,613
Hospice	168	1,736
ASC	168	1,669
RHC	168	851
ESRD	168	1,490

Costs for All Revisit User Fees Assessed

We anticipated that the combined costs for all providers and suppliers for all revisit surveys in FY 2007 would total approximately $37.3 million on an annual basis, with onsite revisit surveys amounting to approximately $34.6 million and offsite revisit surveys totaling approximately $2.7 million (72 FR 53645). However, actual fees assessed in FY 2007 were much less than this annual amount, since CMS did not charge for revisits that occurred prior to publication of the final regulation. Since we continue to operate under these same annual estimates, we provide here estimates of the impact for the period of the current continuing resolution as listed below in monthly estimates in Tables B and C. For the period of the current continuing resolution, we will use the FY 2007 fee schedule established in the final rule for the assessment of fees until a new fee schedule notice is proposed and published as final.

In Table B below, we provide the projected costs for the period of this continuing resolution based on the fee schedule of the final rule. We expect the combined costs for all providers and suppliers for all onsite revisit surveys for the period of this continuing resolution to total approximately $4.3 million. We first multiplied the total number of onsite revisit surveys in one year by the expected revisit user fees assessed per revisits as finalized in Table A above, estimated by provider or supplier, to obtain the annual cost of revisit surveys. We then divided this number by 12 to obtain the monthly cost of onsite revisit surveys and multiplied by the effective period of the continuing resolution (roughly 1.5 months) to obtain the total costs for onsite revisit surveys for the period of the continuing resolution. We then totaled all providers and suppliers to achieve the total costs for all onsite revisit surveys for the period of this continuing resolution.

TABLE B.—ONSITE REVISIT SURVEYS—ESTIMATED MONTHLY COSTS

Facility	Monthly number of onsite revisit surveys	Fee assessed per onsite revisit surveys (hrs × $112)	Monthly costs for onsite revisit surveys*	Total costs for onsite revisit surveys for period of CR**
SNF & NF	1,191	$2,072	$2,467,061	$3,700,592
Hospitals	48	2,554	122,379	183,569
HHA	89	1,613	143,557	215,336
Hospice	21	1,736	37,035	55,552
ASC	8	1,669	13,213	19,819
RHC	12	851	10,567	15,850
ESRD	58	1,490	86,668	130,003
Total	1,427		2,880,480	4,320,721

* Monthly costs may differ from the multiple of monthly revisits and fee per revisit due to rounding.
** Monthly costs were multiplied by the effective period of the CR (roughly 1.5 months) Total numbers of onsite revisit surveys were rounded up based on FY 2006 actual data presented in the final rule.

We expect the combined costs for all providers and suppliers for all offsite revisit surveys to total $343,875 for the period of the current continuing resolution. In Table C below, we first estimated by provider or supplier the number of offsite revisit surveys expected for an entire fiscal year, and multiplied this number by the expected revisit user fee of $168 per offsite revisit survey to obtain the annual cost of surveys. We then divided this number by 12 to obtain the monthly cost of offsite revisit surveys and multiplied this number by the effective period of the continuing resolution (roughly 1.5 months) to obtain the total costs for offsite revisit surveys for the period of the continuing resolution.

TABLE C.—OFFSITE REVISIT SURVEYS—ESTIMATED MONTHLY COSTS

Facility	Monthly number of offsite revisit surveys	Fee assessed per offsite revisit survey ($112 × 1.5 hrs)	Monthly costs for offsite revisit surveys*	Total costs for offsite revisit surveys for period of CR**
SNF & NF	1,262	$168	$211,932	$317,898
Hospitals	23	168	3,892	5,838
HHA	43	168	7,238	10,857
Hospice	4	168	714	1,071
ASC	8	168	1,302	1,953
RHC	6	168	938	1,407
ESRD	19	168	3,234	4,851
Total	1,365		229,250	343,875

* Monthly costs may differ from the multiple of monthly revisits and fee per revisit due to rounding.
** Monthly costs were multiplied by the effective period of the CR (roughly 1.5 months).

As shown in Table D below, we provide the aggregate costs expected as projected for the entire FY 2007, as well as the costs we would expect to offset for the period of the current continuing resolution.

TABLE D.—TOTAL COSTS COMBINED FOR ALL REVISITS SURVEYS PER FISCAL YEAR & PERIOD OF CR

	FY 2007	Period of CR*
Onsite Revisit Surveys	$34,565,760	$4,320,512
Offsite Revisit Surveys	2,751,000	343,980
Total Costs All Revisits	37,316,760	4,664,492

* CR period's costs are based on CR period revisit surveys rounded up to the nearest whole number as shown in Table B & C.

C. Alternatives Considered

CMS considered a number of alternatives to the Revisit User Fee. Such alternatives were discussed in the final rule published on September 19, 2007 (72 FR 53647). We affirm the continuing validity of that analysis. The current continuing resolution provides CMS with the authority to continue projects or activities as was otherwise provided for in FY 2007, and as such CMS is required to publish an interim final rule with comment. This interim final rule with comment merely updates the Congressional authority under which the rule operates.

In accordance with Executive Order 12866, this rule has been reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 488

Administrative practice and procedure, Health facilities, Medicare, Reporting and recording requirements.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV, part 488 as set forth below:

PART 488—SURVEY, CERTIFICATION, AND ENFORCEMENT PROCEDURES

■ 1. The authority citation for part 488 is revised to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act, unless otherwise noted (42 U.S.C. 1302 and 1395(hh)); Pub. L. 110–92, H. J. Res. 52 §§ 101 & 106 (2007).

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

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

Dated: October 11, 2007.

Kerry Weems,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: October 25, 2007.

Michael O. Leavitt,

Secretary.

[FR Doc. 07–5400 Filed 10–26–07; 12:02 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 78

[Docket ID FEMA–2007–0003]

RIN 1660–AA00

Flood Mitigation Assistance

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: The Federal Emergency Management Agency (FEMA) is adopting as final, without substantive change, an interim rule that implements sections 553 and 554 of the National Flood Insurance Reform Act of 1994. Section 553 authorizes a flood mitigation assistance program through which FEMA is authorized to provide grants to States and communities for planning assistance and for mitigation projects that reduce the risk of flood damage to structures covered under contracts for flood insurance. Section 554 establishes the National Flood Mitigation Fund to fund assistance provided under section 553.

DATES: Effective Date: November 30, 2007.

FOR FURTHER INFORMATION CONTACT: Cecelia Rosenberg, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (phone) 202–646–3321, (facsimile) 202–646–2719, or (e-mail) *cecelia.rosenberg@dhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Sections 553 and 554 of the National Flood Insurance Reform Act of 1994 (NFIRA) (Pub. L. 103–325, enacted September 23, 1994) (also known as Title V of the Riegle Community Development and Regulatory Improvement Act of 1994) amended the National Flood Insurance Act of 1968 (42 U.S.C. 4101 *et seq.*). Specifically, section 553 authorized the Director (now Administrator) of the Federal Emergency Management Agency (FEMA) to carry out a flood mitigation assistance program, known as the Flood Mitigation Assistance Program (FMA). Through the FMA Program, FEMA is authorized to provide grants to States and communities for planning assistance and mitigation projects that reduce the risk of flood damage to structures covered under contracts for flood insurance. Section 554 required FEMA to establish the National Flood Mitigation Fund (NFMF) to provide funds for flood mitigation program assistance described in section 553. On March 20, 1997 (62 FR 13346), FEMA published an interim rule implementing section 553 and 554 of the National Flood Insurance Reform Act.

This final rule adopts, without substantive change, the regulations established by the March 20, 1997 interim rule. It addresses the comments received from the public in response to the interim rule, and finalizes the regulations contained in 44 CFR part 78.

Records Management

The Regulation Identifier Number (RIN) listed in the March 20, 1997 interim final rule was 3067–AC45. Since FEMA became a component of the Department of Homeland Security (DHS), FEMA's RINs were renumbered and 3067–AC45 became 1660–AA00.

II. Discussion of Public Comments

FEMA received seven public comments on the interim rule. The seven commenters included five States, one local government, and one association. The comments received, together with FEMA's responses, are set forth below.

The Community Rating System. One commenter wrote that while it is good that the Community Rating System (CRS) criterion may be a basis for a floodplain management plan, CRS communities with repetitive loss or floodplain management plans developed prior to the publishing of 44 CFR part 78 in March 1997 may not realize that their plans will require modification to meet the new criteria of 44 CFR 78.5, and States and regions should be counseled to closely review these older plans. The commenter wrote that the CRS plan reviewer for the Insurance Services Organization (ISO) should be consulted before any FEMA region approves any CRS plans developed prior to 1997 for the purpose of receiving FMA project funds unless the region or State carefully reviews them to see that they meet FMA criteria. The commenter wrote that the States and regions should accept nothing less than plan adoption by resolution of the community's governing board. The commenter also wanted FEMA not to accept as evidence of adoption a letter from the Mayor stating that the community will follow the plan since the CRS criterion requires full adoption by the governing board. The commenter thought that FMA should be consistent with the CRS plan adoption process and require that all local elected officials see the proposed plan and ratify it.

FEMA's Response: The CRS program is a voluntary program that predates these regulations and creates an incentive for communities that participate in the National Flood Insurance Program (NFIP) to implement floodplain management practices that exceed NFIP minimum requirements. The CRS program, which was established in 1993, provides credit for communities in the form of lower flood insurance premium rates for property owners. The CRS has been and is currently operated by FEMA through an agreement with ISO. The schedule of creditable activities is described in its reference guide, the *CRS Coordinator's Manual* available through *http://www.fema.gov/business/nfip/intnfip.shtm.* One of the approved CRS activities that communities may receive credit for is to develop a flood mitigation or repetitive flood loss plan.

FEMA has addressed CRS plans developed prior to 1997 by coordinating with CRS staff to ensure that all review criteria are consistent with FMA and CRS plans. As a result, FEMA has accepted CRS plans based on guidance provided in FEMA Publication No. 299: The FMA Program Guidance (August 1997), as meeting the requirements of § 78.5 as approvable local Flood Mitigation Plans. Further, ISO continues to review CRS plans submitted by local communities against the requirements of § 78.5 if requested by a local

community. Such plans would then be forwarded to the State and FEMA for approval as FMA plans.

Further, § 201.6(c)(5) states that the planning process shall include, documentation ''that the plan has been formally adopted by the governing body of the jurisdiction requesting approval of the plan (*e.g.* City Council, County Commissioner, Tribal Council).'' FEMA has provided implementation procedures in the Multi-Hazard Mitigation Planning Guidance under DMA2000 (Disaster Mitigation Act of 2000) located at *http://www.fema.gov/plan/mitplanning/index.shtm*, which describes how local executives and governing bodies can facilitate plan approval according to local laws and procedures consistent with § 201.6(c)(5).

Insurable structures. One commenter wrote that § 78.1(b) discusses assisting State and local governments in funding cost-effective actions on ''insurable'' structures, while § 78.12 discusses eligible types of projects as being ''insured structures.'' The commenter asked whether the regulation covers ''insurable'' structures or ''insured'' structures. Another commenter wrote that since the State plan must be in place to address insurable structures, this limits the State's eligibility for project money for State agencies who do not have public buildings to protect or whose mission does not involve the protection of private structures. A third commenter asked if States that participate in the self-insurance program are eligible for FMA project monies that affect State owned facilities insured under their program.

FEMA's Response: The terms ''insurable'' and ''insured'' were used in part 78 interchangeably. FEMA realizes it made a technical error in using insurable and insured interchangeably as the two terms have different definitions. FEMA intended to mean ''any structure covered by an insurance policy underwritten by the NFIP.'' FEMA has revised § 78.1(b) in this final rule by replacing ''insurable'' with ''insured.''

The authorized purpose for the FMA program is to reduce the risk of flood damage to structures covered under contracts for flood insurance. Furthermore, activities funded under FMA must be cost-beneficial to the NFMF. Thus, self-insured structures within States participating in the self-insurance program are not eligible to receive FMA project funds.

Use of Planning Grants. One commenter wrote that under § 78.1(b), planning grants can be used to ''assess the flood risk and identify actions to reduce that risk'' but the supplementary information section of the interim rule on planning grants states that the ''purposes of the planning grants is to develop or update a Flood Mitigation Plan.'' The commenter asked if the State or the community could receive a planning grant without actually developing a Flood Mitigation Plan.

FEMA's Response: FEMA will only fund planning activities that will result in a completed project, which in this case is a FEMA-approved State or local flood mitigation plan. The language in § 78.1(b) states that FMA planning grants are intended to help State and local communities assess the flood risk and identify actions to reduce risk. The local mitigation plan is the process FEMA uses for the community to assess flood risk and identify actions to reduce flood risk. Sections 78.4 and 78.5 define eligible planning grant activities. States may only use FMA planning funds to develop State and local Flood Mitigation Plans, which must be adopted by the governing body of the jurisdiction.

Definition of the term ''community.'' One commenter wrote that as written, § 78.2's definition of ''community'' could be interpreted to mean that any jurisdiction, city, or county that does not have the authority to adopt a building code or require zoning, even if that jurisdiction, city, or county has a good floodplain management program would not be eligible for participation in FMA. The commenter wrote that numerous States do not give ordinance-making authority to county level government. For example, in Texas, counties can participate in the NFIP, and some have very strong floodplain management programs, but without the ability to adopt building codes or regulate land use through zoning, would this exclude them from FMA participation? Additionally, the City of Houston has an active floodplain management program with over 45,000 flood policyholders who pay over $16.5 million annually in premiums; however, the city has no zoning (although they have adopted a building code). Does a literal interpretation of the regulation exclude the City of Houston from FMA eligibility?

One commenter wrote that although no one has explicitly included regional agencies (*e.g.*, regional planning commissions, urban drainage districts, metropolitan sewer or sanitary districts, and similar agencies) within the definition of ''communities,'' regional agencies often manage sizable floodplain management programs and have their own mitigation programs; thus, FEMA should consider regional agencies as eligible applicants for grant funds. The commenter wrote that regional agencies can also provide a great deal of planning and technical assistance support to eligible communities.

FEMA's Response: FEMA has historically been flexible in providing FMA planning and project subgrants to local flood control districts that have the capacity to plan for and implement mitigation measures but that may not have the delegated authority from the State to adopt a building code or zoning ordinances. Local flood control districts acting on behalf of one or more local communities would meet the requirements of § 78.3(b)(2) for the purpose of receiving FMA subgrants. Further, FEMA would consider plans developed by local flood control districts to be multi-jurisdictional plans. Section 201.6(c) requires that multi-jurisdictional plans include: (1) Identifiable action items specific to each jurisdiction requesting FEMA approval or credit for the plan, and (2) documentation that the plan has been formally adopted by a governing body representing each jurisdiction such as a City Council, County Commissioner, or Tribal Council.

Planning Grant Approval. One commenter wrote that § 78.3(b)(2) says that the State point of contact can award the planning grants, but that it is unclear whether FEMA approves the planning grants, because § 78.3(a)(2) states that the Director of the FEMA Region will approve the Flood Mitigation Plans.

FEMA's Response: FEMA approves all eligible FMA planning grant applications submitted by the State. The State in turn awards funds to local communities as subgrants. Once the local community has completed the plan, it is forwarded to the State for review and submission to FEMA for approval in order for the local community to become eligible to receive FMA project subgrants.

Procedures for forwarding planning documents to FEMA. One commenter wrote that § 78.3(b), which refers to alternative procedures outlined in § 78.14 that allow the community to coordinate planning document directly with FEMA, seems to imply that these alternative procedures have been formulated. The commenter believes that it is vital that the procedures be finalized and published as soon as possible.

FEMA's Response. The alternative application procedures provided at § 78.3(b) have been seldom utilized by local communities applying for FMA project and planning grants. However, procedures on alternative application

procedures were described in more detail in the FEMA 299 (''Flood Mitigation Assistance Guidance,'') the original FMA implementation document.

Eligibility for Technical Assistance. One commenter wrote that under § 78.4(a), the State is eligible to apply for Technical Assistance grants, and that FEMA Region VII has stated that the State can pass the TA funds through to the local level (*i.e.*, Council of Governments) to administer the TA. Does this mean that local jurisdictions are not eligible to directly apply for the TA funds?

FEMA's Response: States have been permitted to pass FMA technical assistance funds through to the local level under §§ 78.4(b) and 78.8(c) as long as that amount does not exceed 10 percent of the local community's project allocation from the State.

Increase Project Grant funds. One commenter wrote that the base amount of $100,000 awarded to each State for Project Grants is insufficient to perform any meaningful flood mitigation planning projects. The commenter cited the project category of land acquisition of insured structures and underlying real property, where, in many cases, the cost of acquiring a single real property site may exceed $50,000. As a result, the base amount of $100,000 awarded to a State for Project Grants will only allow a State to do very small and inexpensive projects that may not significantly impact a State's long term goal to advance its flood mitigation program within the State.

FEMA's Response: FEMA agrees with the commenter, and will consider removing the $100,000 base limitation in a future rulemaking.

The 5 year grant allocation of $150,000. One commenter asked if, under § 78.8(b), the State can apply once every 5 years for a single planning subgrant of $150,000, and then carry over any unobligated planning grant dollars to the next fiscal year until the 5-year period expires. The commenter also asked if the State can submit an application for a $150,000 planning grant and have FEMA make separate subgrant awards in phases over 5 years, as long as the total amount does not exceed $150,000 in 5 years. Another commenter wrote that, per § 78.9, if the maximum performance period for a planning grant is 3 years, why does a State or community have to wait for 5 years to apply for another planning grant. Another commenter wrote that since planning grants can only be issued to States once every 5 years for an amount up to $150,000, the allocations presented to the States will preclude most States from reaching the $150,000 ceiling if they chose to accept the planning grant allocation in the interim final rule. The commenter felt that the emphasis seems to be the issuance of one grant, not the maximum of $150,000.

FEMA's Response: The State may apply for the full 5-year statutory limit of $150,000 in one grant application if FEMA allocates that amount to the State based on the formula provided in § 78.8(a). Further, the State may apply for multiple applications that total $150,000 over any 5-year period. FEMA believes that the 3-year performance period on planning grants is sufficient for completing and gaining FEMA approval on an FMA plan, and this statutory requirement is not related directly to the 5-year cycle on limits for FMA planning funds. Finally, the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4104c) does not require that each State receive the maximum $150,000 over any 5-year period.

Limits on FMA funds. One commenter asked if, under § 78.8, TA dollars are included in the $20 million maximum for project grants. Can the $20 million be spread over 5 years? Do the awarded funds also have to actually be spent within the 5 years? Another commenter wrote that although he understood funding for the FMA project grant funding was limited to $3,300,000 to any community over 5 years, setting arbitrary limits on States or communities will only serve to stifle the overall effectiveness of the program, and establishing such a low limit puts an unnecessary restraint on the commenter's potential program.

FEMA's Response: The National Flood Insurance Act of 1968, as amended (42 U.S.C. 4104c) lists the statutory limits on FMA project funds at $20,000,000. Since the FMA technical assistance allocation is currently 10 percent of the project grant, all technical assistance funds must be counted as part of the 5 year $20,000,000 for States. FEMA does consider waivers of these statutory funding limits during major disasters or emergencies declared by the President as a result of flood conditions consistent with the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4104c).

Eligibility of mapping projects. One commenter wrote that the limitation regarding planning grants and floodplain map updates in § 78.9 is a concern. The commenter stated that current floodplain maps and the provision of map information in digital format are fundamental in estimating the population and structures at risk. The commenter felt that flood mitigation plans will suffer without the eligibility of funding updated floodplain maps to write them. The commenter asked that FEMA reconsider mapping projects as eligible for FMA planning grants.

FEMA's Response: FEMA is actively engaged in the development and update of floodplain maps under a separate authority of the NFIP (42 U.S.C. 4101), and receives separate appropriations to digitize maps under the Map Modernization program for use by States and local communities in their floodplain management and mitigation planning activities. FEMA determined that mapping activities under FMA to be a duplication of programs; therefore, mapping activities are not included in part 78. States and local communities receive funds for flood mapping activities under the Cooperating Technical Partners Program (CTP). The CTP is an innovative approach to creating partnerships between FEMA and participating NFIP communities, regional agencies, and State agencies that have the interest and capability to become more active participants in the FEMA Flood Hazard Mapping Program. Also, FEMA provides States and local communities with access to flood hazards data including Flood Insurance Rate Maps (FIRMs), Letters of Map Changes, and other technical documents through its Map Service Center at *http://msc.fema.gov/webapp/wcs/stores/servlet/FemaWelcomeView?storeId=10001&catalogId=10001&langId=-1.*

Delay caused by FEMA final approval. One commenter wrote that under § 78.10, the project grant approval process, project applications will be forwarded to FEMA for final approval, and FEMA will provide funding on a project-by-project basis through a supplement to the annual Cooperative Agreement (CA). The concern is that project-by-project approval through the regional offices can be very time sensitive and not conducive to accessing the FEMA dollars within the performance period. Does project-by-project approval delay State access to any of the 10 percent TA dollars associated with the project dollars?

FEMA's Response: FEMA currently awards FMA grants to States using an e-Grant system, rather than through a CA. In 1997, FEMA opted to award most non-disaster grant funds to States under the combined Emergency Management Performance Grant (EMPG). However, FMA and other FEMA non-disaster mitigation grants did not fit under the EMPG structure. This is because the EMPG process was designed for awarding and tracking non-construction

grants, and most mitigation grants, including FMA grants, are awarded and tracked as construction grants. Therefore, FEMA developed a Mitigation e-Grant system which grantees must use to apply for FMA and Pre-Disaster Mitigation Grant Program grants, as required by the E-Government Act of 2002 (Pub. L. 107–347) and the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107). States receive one FMA grant award each fiscal year that includes project, planning, and technical assistance subgrants. Each time a new subgrant is awarded, the annual State grant is automatically amended in the e-Grant system. States are awarded technical assistance funds based on the total dollar amount of eligible FMA project applications. The e-Grant system has facilitated the receipt of all FMA funds, including technical assistance funds to States, in a timelier basis than at the inception of the program.

Eligible types of projects. One commenter stated that a strict interpretation of what encompasses an eligible structure under § 78.12(a) could have a harmful effect on a community's Flood Mitigation Plan. The commenter suggested program flexibility to allow communities the ability to complete their plans; the commenter also suggested a requirement that 90 percent of the properties have flood insurance. Three commenters wrote that the phrase ''minor physical flood mitigation'' in § 78.12(g) needs a better definition. The term ''minor'' is subject to a great deal of interpretation. Commenters suggested that FEMA establish a dollar cap ($100,000), determine a scope of work limitation on this category of project, or further define the term ''minor'' to clarify the type of project that is eligible for funding. One commenter wrote that the term ''Beach nourishment activities'' in § 78.12 needs a better definition. The commenter stated that more specific guidelines will reduce or prevent abuses of FMA intent. Another commenter felt that the acquisition of insured structures and the demolition and removal of insured structures on acquired property per § 78.12 should be considered as one type of project in its entirety.

FEMA's Response: FEMA agrees that a strict interpretation of what encompasses an eligible structure could be detrimental, and FEMA does not dictate the definition of eligible structure. In fact, FEMA allows local communities to conduct their own risk assessments in the process of developing their local mitigation plans; these risk assessments can include identifying eligible insured and non-insured properties for future hazard mitigation projects. In response to the comment regarding a 90 percent flood insurance requirement, if a local community chooses to apply for an FMA project grant, all properties included in the application must have an NFIP insurance policy in force at the time of application. The local community can encourage an uninsured property owner to become NFIP-insured in order to participate in an FMA mitigation project that is otherwise cost beneficial to NFMF. In response to the comment that ''minor physical flood mitigation'' be better defined, the phrase is derived from the eligible mitigation activities as stated in the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4104c):

> Minor physical mitigation efforts that do not duplicate the flood prevention activities of other Federal agencies and that lessen the frequency or severity of flooding and decrease predicted flood damages, which shall not include major flood control projects such as dikes, levees, seawalls, groins, and jetties unless the Director specifically determines in approving a mitigation plan that such activities are the most cost-effective mitigation activities for the National Flood Mitigation Fund.

FEMA does not place a funding limit on the amount a local community may apply for an individual minor localized structural flood control project, since the only limit provided by the statute is the 5-year-statutory-funding limit of $3,300,000 on FMA projects funds for local communities. FEMA expects to address the issue of beach nourishment as well as the acquisition of real property and demolition or relocation of buildings for open space in a future rulemaking.

Grant administration. Three commenters wrote that § 78.13 makes no mention about administrative costs incurred by grantees and subgrantees as grant program participants. The commenters wrote that this section is unclear as to whether or not State and local governments are expected to bear these administrative costs (which can be considerable) on their own or as part of the grant program. One commenter recommended that this section be rewritten to state that the administrative costs incurred by State and local governments can be considered to be part of the non-Federal 25 percent cost share for an eligible grant. Another commenter asked if the States received administrative allowance funds to administer the FMA dollars, as States do with the Hazard Mitigation Grant Program (HMGP). A commenter stated that § 78.13(a) penalizes States that may be willing to contribute a Full Time Employee (FTE) dedicated to providing technical assistance to other State agencies and communities. The requirement of a cash contribution from States may prohibit many States from participating, especially with the limited amount of funding available; the commenter also opposes the 12.5 percent limit on in-kind contributions. One commenter asked if time extensions are awarded under § 78.13(c).

FEMA's Response: Currently, States are eligible to apply for FMA technical assistance funds to pay State Program Manager salaries as long as those amounts are directly allocable to the FMA program and do not duplicate costs allowed under a State's indirect cost agreement. Any amount reimbursed for salaries requires a 25 percent non-Federal cost share, half of which must be provided as cash. The FMA cost-share requirement for planning and project activities and management costs remains consistent with current statutory requirements under the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4104c):

> The Director may not provide mitigation assistance under this section to a State or community in an amount exceeding 3 times the amount that the State or community certifies, as the Director shall require, that the State or community will contribute from non-Federal funds to develop a mitigation plan under subsection (c) and to carry out mitigation activities under the approved mitigation plan. In no case shall any in-kind contribution by any State or community exceed one-half of the amount of non-Federal funds contributed by the State or community.

FMA grant performance periods may be extended consistent with the guidelines provided in § 13.23(b) and implemented in annual program guidance at *http://www.fema.gov/government/grant/fma/index.shtm* and consistent with statutory time limitations on FMA planning grants provided in the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4104c). Generally, the performance period of FMA project grants may be extended twice if work is in progress and if financial and programmatic progress reports are current. FMA planning grants may be extended one time within the maximum statutory 3-year performance if work is in progress and if financial and programmatic progress reports are current.

Fund rollover. One commenter requested additional information regarding the appropriations rollover for FMA dollars to the next fiscal year.

FEMA's Response: If Congress appropriates funds, States are awarded FMA grants annually based upon State

target allocations. Congress historically has appropriated FMA funds with a 2-year period of availability. FEMA will carryover FMA funds, including technical assistance funds, once during the 2-year period of availability, if the State has eligible projects that require further benefit cost, engineering, or environmental review and that could not be obligated during the first fiscal year. Eligible project, planning, and technical assistance grants must be obligated within the 2-year period of availability. The maximum recommended performance period for FMA project and technical assistance grants is 4 years, and the maximum statutory performance period for FMA planning grants is 3 years.

The Catalog of Federal Domestic Assistance number. A commenter asked for the Catalog of Federal Domestic Assistance (CFDA) number.

FEMA's Response: The current CFDA number for FMA grants awarded under part 78 is 97.029. The FEMA Assistance Officers and their State counterparts are notified of the current CFDA number through annual program guidance at *http://www.fema.gov/government/grant/fma/index.shtm.*

Plan revisions. A commenter asked if a community has to follow the same procedure for developing and adopting the initial flood mitigation assistance plan in order to submit a revision to the plan. One commenter asked if an administrative revision to the local plan would require public participation. Another commenter asked if the State can approve a revision to the local plan or if FEMA must approve the revision.

FEMA's Response: Under part 78, revisions to flood mitigation plans are not required after initial approval of the plan. Further, there is no FEMA requirement for public participation in administrative revisions to flood mitigation plans. However, States may establish their own policies and procedures on requiring and approving local plan updates and/or administrative revisions.

Communities that have pre-existing plans. A commenter asked whether communities that already have developed a flood mitigation plan can obtain a planning grant to update or revise its flood mitigation plan to fit FMA requirements.

FEMA's Response: States and local communities can apply for FMA planning funds every 5 years for the purpose of plan updates and can reapply for funds during the same 5-year period if the State or local community has not exceeded the State limit of $150,000 or the local limit of $50,000.

Approval time. One commenter asked for the amount of time that the FEMA has to approve a revision to the plan.

FEMA's Response: Under the terms of the National Flood Insurance Act of 1968 as amended, (42 U.S.C. 4104c), FEMA has 120 days to approve any revisions or updates to the original FEMA-approved plan if such revisions or updates are funded with FMA program funds.

The scope of mitigation planning. One commenter wrote that all flood mitigation projects are, in fact, local projects, and that the interim final rule places too much emphasis on community flood mitigation planning as opposed to planning on an entire watershed basis. The commenter wrote that the flood mitigation program should encourage the development of a flood mitigation planning approach that will take into consideration all relevant flood mitigation factors and impacts within a watershed. The commenter wrote that FEMA can take the lead in promoting a much more comprehensive solution to the nation's flood mitigation problems.

FEMA's Response: Flood mitigation plans developed to meet the FMA planning requirements may be multi-jurisdictional, such as a watershed-based approach. Multi-jurisdictional plans include local planning objectives submitted from each community or jurisdiction that would have its local governing body adopt the plan for the purpose of receiving FMA project funds.

State distribution of grant funds. One commenter wrote that States should not have full discretion for determining the distribution of available grant funding unless FEMA establishes and enforces clear, specific, and objective criteria for rating and prioritizing the grant applications, and that criteria is available to potential grant applicants prior to development of their mitigation plans. In addition, the commenter wrote that eligible jurisdictions turned down for a grant by their State should be given the opportunity to appeal the decision to FEMA and/or submit the application directly to FEMA for consideration.

FEMA's Response: FMA is a State-administered program, meaning that States work with local communities to identify, select, and forward to FEMA projects and planning activities that will reduce the risk of flood damage to NFIP-insured structures based on detailed annual program guidance provided at *http://www.fema.gov/government/grant/fma/index.shtm.* Further, FEMA regional offices oversee the adherence of States to the annual program guidance when awarding grants to communities. FEMA does not use an appeals process for local communities whose FMA subgrant applications are declined by their State. However, if a State requests that FEMA review an FMA grant determination, FEMA would re-examine prior planning grant decisions made by the State. Furthermore, local communities are able to resubmit, the next fiscal year, subgrant applications that have been declined.

Cost-effective mitigation measures. One commenter wrote that the interim rule limited certain structure retrofitting that can be employed as part of cost-effective mitigation measures. For example, examinations of flood insurance claims histories for repetitive loss structures may suggest minimal retrofitting efforts such as elevating the electrical panel may remove repetitive loss and be more cost effective and practical than elevating the entire structure.

FEMA's Response: FMA project grants may only be used to fund cost-effective mitigation measures for individual properties, such as acquisition or elevation, which provide a 100-year level of flood protection. FEMA has determined that mitigation actions not resulting in a 100-year level of flood protection for individual properties are inconsistent with the requirements of the FEMA floodplain management regulations provided in § 60.3. Therefore, elevation and dry-floodproofing activities, such as minimal retrofits for repetitive loss properties recommended by the commenter, are not considered eligible for FMA project funds if they do not result in a 100-year flood protection for residential and non-residential properties.

Premiums. One commenter asked whether insurance premiums would be reimbursable under the FMA program, as they are under the Hazard Mitigation Grant Program. The commenter stated that reimbursed insurance premiums were perceived as an incentive for maintaining insurance during the acquisition program after the 1993 floods in order to get property owners to accept FEMA buyouts.

FEMA's Response: Insurance premiums are not reimbursable under the FMA program. For acquisition projects, HMGP provides States with the opportunity to allow local communities to reimburse flood insurance premium amounts to property owners. However, States and local communities are not allowed to reimburse flood insurance premiums amounts to participants in FMA acquisition projects because the flood insurance policy is a requirement for program participation.

Tracking repetitive loss structures. One commenter wrote that the Federal Insurance Administration should establish a method to track acquisition of repetitive loss structures so that FEMA can adjust allocation formulas to reflect the actual number of structures at risk. The commenter wanted to ensure that FEMA is both tracking the number of new repetitive loss properties as well as the number of mitigated properties, so that target allocation amounts are computed in a fair manner.

FEMA's Response: Since the inception of the Community Rating System in 1990, FEMA has been tracking both new and mitigated repetitive loss properties present in NFIP participating communities. New repetitive loss properties are added through the FEMA insurance databases which track claims data on all NFIP insured structures. Repetitive loss properties are mitigated by several means including acquisition, elevation, floodproofing, and structural flood control projects. FEMA tracks these mitigated properties through the Bureau and Statistical Agent (BSA) developed by the NFIP within its data mainframe to capture and record both the reported mitigation action and the reported funding sources used to achieve that mitigation action. As of June 30, 2007, 13,477 repetitive loss properties have been identified as mitigated in some manner by the use of local, State, and Federal funds. This number includes 1,372 mitigated properties which were partially or completely demolished by fire, wind, flood, or other natural disasters for which FEMA or another local, State, or Federal agency provided funds in order to complete the removal of the original structure. FEMA tracks mitigated and demolished repetitive loss properties in order to ensure an accurate count of the remaining repetitive loss properties in need of mitigation. Previously mitigated structures are not counted when determining the need for future mitigation activities. FEMA uses the most current data available on unmitigated repetitive loss structures in order to determine FMA target allocations each fiscal year for States and territories.

III. Regulatory Requirements

A. Executive Order 12866, Regulatory Planning and Review

FEMA has prepared and reviewed this rule under the provisions of Executive Order 12866, Regulatory Planning and Review. OMB has determined that this rule is not a significant regulatory action. OMB has not reviewed this rule. Under Executive Order 12866, a significant regulatory action is subject to the Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The interim rule published on March 20, 1997 at 62 FR 13346 established the regulations that this document makes final. FEMA calculates the annual economic impact of the interim rule to be approximately $40,000,000. As this final rule makes no significant change to the interim rule, FEMA is adopting the $40,000,000 annual economic impact estimate of the interim rule as the annual economic impact of this final rule. The following paragraphs provide a more detailed explanation of the economic impact of the rulemaking.

This rulemaking establishes the FMA grant system. States receive one FMA grant award each fiscal year that includes three types of subgrants: Project, Planning, and Technical Assistance subgrants. FMA Project Grants are available to States, and NFIP-participating communities and Indian tribal governments, to implement measures to reduce flood losses. Up to 10 percent of the Project Grant may be given to States as a Technical Assistance Grant. These funds may be used to help administer the program. FMA Planning Grants are available to States, and NFIP-participating communities and Indian tribal governments, to prepare Flood Mitigation Plans.

The development of community flood mitigation plans is required as a condition of receiving FMA project grants under Section 553 of the National Flood Insurance Reform Act of 1994, Title V, (Pub. L. 103–325). Section 553 mandates that FEMA approve plans before awarding any project grants to a community or State applicant. The purpose of the planning requirement is to encourage communities and States to evaluate the flood hazards in their jurisdiction(s) and devise a feasible mitigation strategy to reduce the impacts of the hazard. As communities implement these strategies, fewer flood losses to insured structures will occur, resulting in reduced costs to the National Flood Insurance Fund. There is no renewal requirement with respect to FMA plans, and only communities are required to have approved FMA plans. There is no such requirement for States.

There are 660 communities with approved plans. There were approximately 60 approved per year from 1997–2005, with an annual increase to 120 in 2006 after Hurricanes Katrina and Rita. For the purpose of this analysis, FEMA is estimating that there will be 120 local plans that are developed and reviewed for approval each year. FEMA estimates that it takes an average of 2,080 hours per local plan to develop, resulting in 249,600 hours of work. The hours of work is calculated as follows: 120×2080. In addition, all States must review the local plans submitted. Assuming 120 local plans are submitted annually and it takes 8 hours to review each plan, the total annual burden for both States, local, and tribal governments would be 250,560 hours. Total annual burden is calculated as follows: $((120 \times 8) + 249{,}600)$. Using wage rates from the May 2004, U.S. Department of Labor, Bureau of Labor Statistics (BLS), Standard Occupation Classification (SOC) System, the median hourly wage for urban and regional planners (SOC Code Number 19–3051) is $26.31 per hour. Adding 30 percent to the BLS figure to account for benefits, FEMA has calculated the burden using a wage rate of $34.20 per hour. Therefore, the total cost to respondents to collect the information required in flood mitigation plans in this rule is $8,569,152 annually. The total cost to respondents is calculated as follows: $(250{,}560 \times \$34.20)$.

The next cost implication of this rule is on the submission of FMA grant applications. There are over 18,000 communities participating the NFIP, however, the limited funding of the program will not permit approval of a large number of applicants. The number of respondents used to calculate the burden hours was, therefore, estimated to be 56 States and Territories $\times$ 4 subgrants per State = 224 + 56 States to review, coordinate and forward grant applications to FEMA for approval = 280 total respondents. Using wage rates from the May 2004, BLS SOC System, the median hourly wage for urban and regional planners (SOC Code Number 19–3051) is $26.31 per hour. Adding 30 percent to the BLS figure to account for

benefits, FEMA has calculated the burden using a wage rate of $34.20 per hour. Using the Paperwork Reduction Act calculations approved by OMB for ''FEMA Emergency Preparedness and Response Directorate Grants Administration Forms'' (OMB 1660–0025) and ''Flood Mitigation Assistance (eGrants) and Grant Supplemental Information'' (OMB 1660–0072), the burden hours for the collection of information for FMA grants with supplemental information are estimated at 6,642 hours. Therefore, the total cost to respondents to apply for Flood Mitigation Assistance is $227,156 annually (6,642 × $34.20).

The total Federal appropriations available for the FMA program, which establishes the annual award amounts, began at $12,600,000 in FY 1997/1998 and has slowly risen to $31,000,000 for FY 2007/2008. As the March 20, 1997 interim rule established the FMA program, FEMA is counting the $31,000,000 awarded as an economic impact of this rule, as it represents a ''transfer'' from the Federal government. Therefore, the annual economic impact of this regulation, including the cost to prepare local plans, apply for grants, and the actual grant funds awarded is $39,796,308, or approximately $40,000,000. The economic impact is calculated as follows: ($8,569,152 + $227,156 + $31,000,000).

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), FEMA is not required to prepare a final regulatory flexibility analysis for this final rule because the agency has not issued a notice of proposed rulemaking prior to this action.

C. National Environmental Policy Act

The National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) (NEPA) implementing regulations governing FEMA activities at 44 CFR 10.8(d)(2)(ii) categorically exclude the preparation, revision, and adoption of regulations from the preparation of an environmental assessment or environmental impact statement, where the rule relates to actions that qualify for categorical exclusions. Actions to be implemented under program regulations revised or adopted by this rulemaking include structural mitigation measures. These activities are categorically excluded under 44 CFR 10.8(d)(2)(xv) and (xvi). Thus, the preparation, revision, and adoption of regulations related to these actions are also categorically excluded.

D. Executive Order 12898, Environmental Justice

Under Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, published February 16, 1994), FEMA incorporates environmental justice into its policies and programs. The Executive Order requires each Federal agency to conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that those programs, policies, and activities do not have the effect of excluding persons from participation in programs, denying persons the benefits of programs, or subjecting persons to discrimination because of race, color, or national origin.

FEMA believes that no action under this rule will have a disproportionately high or adverse effect on human health or the environment. This rule is intended to provide grant funding to States and local communities to assist them with efforts to mitigate against flooding. This rulemaking is intended to assist States and local communities in reducing the adverse affects on human health or the environment from flooding. Accordingly, the requirements of Executive Order 12898 do not apply to this rule.

E. Congressional Review of Agency Rulemaking

FEMA has sent this final rule to the Congress and to the Government Accountability Office under the Congressional Review of Agency Rulemaking Act, (''Congressional Review Act,'') Public Law 104–121. This rule is not a ''major rule'' within the meaning of the Congressional Review Act. This rule will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have ''significant adverse effects'' on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises. The rule is not an unfunded Federal mandate within the meaning of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, and any enforceable duties that FEMA imposes are a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

F. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995, enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year.

The rule is not an unfunded Federal mandate as any enforceable duties that FEMA imposes are a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

G. Executive Order 13132, Federalism

Executive Order 13132, entitled ''Federalism,'' (64 FR 43255, published August 10, 1999), sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications; that is, regulations that have substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action. This rulemaking creates an entirely voluntary grant program that may be used by States and local governments to receive Federal grants for mitigation projects, plans and technical assistance. States and local governments are not required to seek grant funding and this rulemaking does not limit the States' policymaking discretion. This final rule involves no policies that have federalism implications under Executive Order 13132.

H. Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), 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 control number. This final rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act. The regulations finalized by this rule contain requirements for the submission of information contained in OMB-approved collection titled ''Flood Mitigation Assistance—Flood Mitigation

Plan,'' OMB approval number 1660–0075.

I. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

FEMA has reviewed this rule under Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, published November 9, 2000). In reviewing the portion of the rule which streamlines the mitigation planning requirements affecting Indian tribal governments, FEMA finds that, while it does have ''tribal implications'' as defined in Executive Order 13175, 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.

J. Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights

FEMA has reviewed this rule under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' (53 FR 8859, published March 18, 1988) as supplemented by Executive Order 13406, ''Protecting the Property Rights of the American People'' (71 FR 36973, published June 28, 2006). This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630.

K. Executive Order 12988, Civil Justice Reform

FEMA has reviewed this rule under Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, published February 7, 1996). This rule meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden.

List of Subjects in 44 CFR Part 78

Flood insurance, Grant programs.

■ Accordingly, for the reasons stated in the preamble, the interim rule amending 44 CFR part 78 which was published at 62 FR 13346 on March 20, 1997, is adopted as final, with the following changes:

PART 78—FLOOD MITIGATION ASSISTANCE

■ 1. The authority citation for part 78 is revised to read as follows:

Authority: 6 U.S.C. 101; 42 U.S.C. 4001 *et seq.*; 42 U.S.C. 4104c, 4104d; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

§ 78.1 [Amended]

■ 2. In § 78.1, paragraph (b), remove the word ''insurable'' and add, in its place, the word ''insured''.

Dated: October 24, 2007.

Harvey E. Johnson, Jr.,

Deputy Administrator/Chief Operating Officer, Federal Emergency Management Agency.

[FR Doc. E7–21263 Filed 10–30–07; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Parts 201, 204, and 206

[Docket ID FEMA–2007–0004]

RIN 1660–AA17

Hazard Mitigation Planning and Hazard Mitigation Grant Program

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: The Federal Emergency Management Agency (FEMA) is adopting as final, without substantive changes, interim rules that establish requirements for hazard mitigation planning and the Hazard Mitigation Grant Program (HMGP) pursuant to sections 322 and 323 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

DATES: This final rule is effective November 30, 2007.

FOR FURTHER INFORMATION CONTACT: Karen Helbrecht, Risk Analysis Division, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington DC, 20472, (phone) 202–646–3358, (facsimile) 202–646–3104, or (e-mail) *Karen.helbrecht@dhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

This rulemaking finalizes, without substantive changes, interim rules implementing sections 322 and 323 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) (42 U.S.C. 5165), enacted by section 104 of the Disaster Mitigation Act of 2000 (DMA 2000), (42 U.S.C. 5121 note). Section 322 requires, as a condition of receipt of federal hazard mitigation grant assistance, hazard mitigation planning and is implemented in the Emergency Management and Assistance regulations at 44 CFR part 201 (Mitigation Planning). Section 323 requires, as a condition of receipt of disaster loans or grants distributed under the Hazard Mitigation Grant Program (HMGP) that minimum repair and construction codes, specifications, and standards are followed. Section 323 is implemented at 44 CFR part 206 (Federal Disaster Assistance for Disasters Declared On Or After November 23, 1988), Subpart N (Hazard Mitigation Grant Program).

Parts 201 and 206 outline mitigation planning and hazard mitigation grant requirements, respectively, for State, Indian tribal, and local entities. To be eligible for FEMA mitigation and public assistance grant funds (except for emergency assistance), State, local, or Indian tribal governments must have a FEMA-approved hazard mitigation plan. All hazard mitigation plans must be submitted to FEMA for final review and approval. FEMA will review and comment on the plan within 45 days, whenever possible. Once approved, local plans are to be revised and resubmitted to FEMA every 5 years, State plans are to be revised and resubmitted to FEMA every 3 years, and Indian tribal governments may either apply directly to FEMA, thereby assuming the responsibilities of a State, or may apply through a State, thereby assuming the responsibilities of a local government.

Additionally, for States that complete FEMA requirements for enhanced mitigation planning, the amount of HMGP funds available increases from 15 percent of the Federal share of disaster assistance for that event to 20 percent of the Federal share of disaster assistance for that event. Up to 7 percent of hazard mitigation grants may be used to develop State, tribal, and/or local mitigation planning activities outlined in 44 CFR part 201.

There have been four interim rules (IRs) and one correction published in this rulemaking action. On February 26, 2002, FEMA published an IR at 67 FR 8844 implementing section 322 of the Stafford Act. This first IR addressed State mitigation planning, identified new local mitigation planning grant requirements, authorized HMGP funds for planning activities, and increased the amount of HMGP funds available to States that develop a comprehensive, enhanced mitigation plan.

On October 1, 2002, FEMA published a second IR at 67 FR 61512. This IR amended the February 26, 2002, IR to

extend the date by which State and local governments must develop mitigation plans as a condition of grant assistance in compliance with 44 CFR part 201 from November 1, 2003 to November 1, 2004.

On October 28, 2003, FEMA published a third IR at 68 FR 61368. This IR clarified that the November 1, 2003 effective date for the planning requirement applied only to Pre-Disaster Mitigation (PDM) grant funds awarded under any Notice of Availability of Funding Opportunity issued after that date. It also updated the mitigation planning requirements identified in 44 CFR part 204 (Fire Management Assistance Grant Program), as well as 44 CFR part 206, subpart H (Public Assistance Eligibility) to bring those sections into conformity with the existing planning requirements in 44 CFR part 201.

On November 10, 2003, FEMA published a correcting amendment to the third IR at 68 FR 63738, correcting a paragraph reference.

On September 13, 2004, FEMA published a fourth IR at 69 FR 55094. This IR provided a mechanism for Governors or Indian tribal leaders to request a 6 month extension of the plan approval deadline for State-level mitigation plans, up to May 1, 2005. The IR also allowed mitigation planning grants provided through the PDM program to continue to be available to State, Indian tribal, and local governments after November 1, 2004. The IR also made technical amendments and adjusted the general major disaster allocation for HMGP from 15 percent to 7.5 percent to be consistent with statutory mandates.

With respect to docket management, the Regulatory Identifier Number (RIN) listed in the first two IRs was 3067–AD22. Since FEMA became a component of the Department of Homeland Security (DHS), FEMA's RINs were renumbered and 3067–AD22 became 1660–AA17.

II. Discussion of Public Comments

FEMA received 17 public comments on the February 26, 2002 IR, and 3 comments on the October 1, 2002 IR. FEMA received no comments on the October 28, 2003 or September 13, 2004 IRs. Fourteen State emergency management agencies, three organizations, two local governments, and one independent group submitted comments. The comments received, together with FEMA's response, are set forth below. The ''Multi-Hazard Mitigation Planning Guidance under DMA2000'' (also known as the Mitigation Planning ''Blue Book'') and the FEMA ''How-To'' series for Mitigation Planning (FEMA 386) are posted on the FEMA Web site (*http://www.FEMA.gov/library*). Unless otherwise stated, these are the documents referred to in FEMA's response when references to program policy or guidance are made.

Comments on the First Interim Rule

Mitigation Planning Requirement Support; Timeline: Six commenters indicated support for the hazard mitigation planning process, agreeing that the process is necessary for effective, sustained mitigation programs. Thirteen commenters wrote that there was not enough time for State and local governments to comply with the planning requirements, and that the timeframe should either be extended or the requirements eased in over time.

FEMA's response: FEMA recognized that not enough time was originally allowed to prepare the plans and issued another interim rule on October 1, 2002 that extended the planning requirement for State Mitigation Plans from November 1, 2003 to November 1, 2004. FEMA also extended the local planning requirement under the HMGP to November 1, 2004. In addition, FEMA published an interim rule on September 13, 2004 which provided a mechanism for Governors or Indian tribal leaders to request a 6 month extension of the effective date for State level mitigation plans (to May 1, 2005). All 50 States, the District of Columbia, and 6 Territories had approved hazard mitigation plans by May 1, 2005. Currently, all 50 States, the District of Columbia, 7 territories, and 33 Indian tribal governments have approved State level mitigation plans. In addition, over 11,000 jurisdictions now have approved local level mitigation plans. FEMA believes the timeframes to implement hazard mitigation plans have been sufficient.

Technological Hazards: Five commenters wrote that plans should be required to address manmade or technological hazards.

FEMA's response: Section 322 of the Stafford Act specifically requires mitigation planning for natural hazards, and FEMA decided that it was not appropriate to require planning for manmade or technological hazards. However, FEMA does support plans that address both natural and technological or manmade hazards. A State, Indian tribal, or local mitigation plan can be approved under the Stafford Act without consideration of technological hazards. However, FEMA's planning guidance can be used to assist in developing and evaluating plans that include manmade and technological hazards as part of a comprehensive mitigation strategy. More specifically, FEMA has developed a guidebook titled: ''Integrating Manmade Hazards into Mitigation Planning'' as part of the Planning ''How-To'' guidance series. This document is number seven in that series (FEMA 386–7).

Number of hours necessary to prepare a plan: Two commenters wrote that FEMA underestimated the average number of hours necessary to prepare a local mitigation plan.

FEMA's response: When FEMA published the February 26, 2002, interim rule, FEMA's original estimate of the number of hours necessary to prepare a local mitigation plan was based on planning done under the Flood Mitigation Assistance (FMA) program. FEMA published an estimate of 300 hours per plan to develop State or local mitigation plans under part 201. After several years of implementing the planning regulations, this estimate was adjusted to 2,080 hours to develop new State, local, or Indian tribal plans and 320 hours for plan updates to more accurately reflect the amount of time States and local communities actually spent in developing new plans or updating plans to meet the 3- or 5-year update requirements.

Level of information required to develop plans: Six commenters wrote that the level of detail required to develop local mitigation plans may be unreasonable, that the costs necessary to develop the plans result in an unfunded mandate, and that communities will be reluctant to develop plans because of a fear of liability in the event that problems are identified and mitigation measures are not implemented.

FEMA's response: The February 26, 2002 interim rule established new requirements for hazard mitigation planning. FEMA worked to ensure that appropriate guidance was developed for those responsible for developing, evaluating, and reviewing the plans. FEMA believes that the level of detail is reasonable and necessary to ensure that the statutory purposes of the mitigation planning provision are met and result in meaningful and effective mitigation planning. FEMA hosted a series of workshops in both 2002 and 2003 at each FEMA Region at which every State was represented. These workshops provided an opportunity to clarify the planning requirements identified in the regulation and to answer questions regarding these requirements. During the workshops, FEMA clarified the level of information required by the regulations in developing risk assessments for local mitigation plans. FEMA also issued policy related to the

possible lack of hazard specific risk information, which allows planners to use the ''best available information'' that is currently available in doing the risk assessment, and document how that information would be improved over time.

FEMA recognized that many jurisdictions did not budget for the costs associated with the development of mitigation planning. FEMA made an effort to ensure that the existing mitigation grant programs (HMGP, PDM, and FMA) were available to assist as many jurisdictions as possible. Through these programs, FEMA has approved over 1,400 planning grants between February 2002 and March 2007 with an obligated Federal share of over $157,000,000. As stated above, all 50 States, the District of Columbia, 7 territories, and 33 Indian tribal governments have approved State level mitigation plans. In addition, over 11,000 jurisdictions have approved local level mitigation plans. In fact, over 50 percent of the population of the United States is covered by an approved local level mitigation plan. Since these regulations were originally published in 2002, over 1,400 planning grants have been awarded and over 14,000 jurisdictions are covered by an approved mitigation plan. Due to the volume of plans being developed and approved, it appears that the issue of liability has not been a significant reason for communities to not undertake development of a mitigation plan.

Significant regulatory action: Two commenters disagreed with FEMA's conclusion that the rule is not an economically significant regulatory action because the nationwide cost projection of less than $100 million annually to implement the rule is not realistic.

FEMA's response: FEMA disagrees. For the reasons cited in the Executive Order 12866 section below, FEMA asserts that this is not an economically significant regulatory action. The annual impact of this rule on the economy is approximately $46 million. This regulation's effect on the economy is below the $100 million threshold to qualify as an economically significant action. Furthermore, this final rule makes no significant change to the interim rules which have been in place, and the regulated industry has been following, since 2002.

Coordination among FEMA Regions: Two commenters wrote that coordination within the 10 FEMA Regions is needed to ensure consistency for plan review and other aspects relating to regulation implementation.

FEMA's response: FEMA has worked to ensure that the regulation has been implemented in a fair and consistent manner. The agency has held several workshops, meetings, and training sessions to bring together FEMA staff and State representatives to identify areas of concern and to develop policy and guidance to resolve these issues. For example, a FEMA course entitled ''Mitigation Plan Review'' has been delivered at FEMA's Emergency Management Institute (EMI) in Emmitsburg, Maryland, and in almost all FEMA Regions, as well as in many States. FEMA will continue to work towards a nationally consistent application of the planning requirements.

Flexibility in implementing the requirements: Four commenters wrote that it is necessary for hazard mitigation plans and the hazard mitigation planning process to be flexible to meet the needs of diverse communities, to address mitigation issues based on actual circumstances, and to meet post-disaster mitigation needs.

FEMA's response: FEMA understands the commenters' concerns. To emphasize the importance and flexibility of the planning process, FEMA has taken, to the extent possible, a ''performance standard'' approach rather than a ''prescriptive'' approach to the planning requirements. In other words, hazard mitigation planning requirements are designed to generally identify what should be done in the process and documented in the plan, rather than specify exactly how it should be done. This approach recognizes and appreciates the inherent differences that exist among State, Indian tribal, and local governments with respect to size, resources, capability, and vulnerability. In addition, FEMA recognizes that flexibility is necessary in the post-disaster environment, and that individually-tailored mitigation plans can be very useful tools in the recovery process.

Benefit-cost and planning: Eight commenters wrote and asked what level of effort is required to prioritize cost-effective projects in the State level plan and in the local level action plan where ''benefits are maximized according to a cost benefit review of the proposed projects and their associated costs.''

FEMA's response: Local mitigation plans do not require a formal benefit-cost calculation to be included within the plan document. However, one consideration in deciding what type of mitigation action(s) to pursue is an economic assessment of the particular action. This (and other considerations) should be debated and discussed as part of the planning team's and/or larger community's decision-making process. A possible result of these local discussions could be the decision to complete a formal benefit-cost evaluation of the various mitigation approaches that are technically appropriate for the situation. However, this is not required to be included in the plan. It is sufficient if economic considerations are summarized in the plan document as part of the comprehensive range of specific mitigation actions of projects being considered. Once funding is sought for the particular mitigation action, a detailed benefit-cost calculation would be required as described under the various grant program regulations. A similar evaluation should be done as part of the State planning process. The plan is required to document the process by which projects and activities will be prioritized and ranked, and this process must include cost effectiveness. In addition, FEMA intends to release additional guidance to help clarify the requirements.

Definition of Critical facility: Two commenters requested a definition of the term ''critical facility.''

FEMA's response: The list of assets that are most important to protect, as well as the criticality of any given facility, can vary widely from community-to-community. Thus, there is no universal definition of a critical facility, nor is one associated with FEMA's planning requirements. For planning purposes, a jurisdiction should determine criticality based on the relative importance of its various assets for the delivery of vital services, the protection of special populations, and other important functions. FEMA's Mitigation Planning How-To Guide, ''Understanding Your Risks: Identifying Hazards and Estimating Losses'' (FEMA 386–2) provides guidance on how to identify critical facilities. Based on a hazard-by-hazard identification of facilities that may be at risk, the Guide's emphasis on determining priorities for inventory data collection will help planners identify assets that are most critical to the jurisdiction. The companion publication ''Integrating Manmade Hazards into Mitigation Planning'' (FEMA 386–7) details how asset inventory can be tailored to focus on high-risk facilities such as critical infrastructures and key resources. In addition, the inventory information available with FEMA's HAZUS–MH loss estimation software can assist in identifying critical facilities. HAZUS–MH databases include information on essential facilities such as hospitals,

police and fire stations, emergency operations centers, shelters, and schools; transportation systems; utility lifelines; high potential loss facilities such as potable water, wastewater, oil, natural gas, electric power, and communication systems; and hazardous material facilities.

Other sources provide additional guidance on identifying facilities that may be critical. FEMA's ''Public Assistance Guide'' (FEMA 322) states that ''[c]ritical facilities are those that serve as emergency shelters; contain occupants who are not sufficiently mobile to avoid death or injury, such as hospitals; house emergency operation or data storage that may become lost or inoperative; are generating plants and principal points of utility lines; or that produce, use, or store volatile, flammable, explosive, toxic, or water reactive materials.'' The related regulation at § 206.226, Restoration of damaged facilities, refers to facilities that provide critical services, ''which include power, water * * * sewer services, wastewater treatment, communications, emergency medical care, fire department services, emergency rescue, and nursing homes.'' Further, the National Infrastructure Protection Plan (NIPP), issued in 2006, provides a framework for a national strategy that includes State, local, Tribal and regional identification of risks and the protection of ''critical infrastructure'' and ''key resources.'' Critical Infrastructure is defined in the NIPP as ''[a]ssets, systems, and networks, whether physical or virtual, so vital to the United States that the incapacity or destruction of such assets, systems, or networks would have a debilitating impact on security, national economic security, public health or safety, or any combination of those matters,'' and Key Resources is defined as ''publicly or privately controlled resources essential to the minimal operations of the economy and government.'' Mitigation planning is identified in the NIPP as an activity that can help achieve protection of these assets.

The hazard mitigation plan should provide enough information regarding critical facilities to enable the jurisdiction to identify and prioritize appropriate mitigation actions. However, some information may be deemed highly sensitive and should not be made available to the public. Such information that the jurisdiction considers sensitive should be treated as an addendum to the mitigation plan so that it is still a part of the plan, but access can be controlled. For more information on protecting sensitive information *See,* ''Integrating Manmade Hazards into Mitigation Planning'' (FEMA 386–7).

FEMA notes that in § 201.4(c)(2)(ii), the regulation contains the phrase ''State owned critical or operated facilities,'' when in fact FEMA intended to use the phrase ''State owned or operated critical facilities.'' This typographical error is corrected in this final rule.

Coordination of FEMA's planning requirements: Four commenters requested that FEMA coordinate its planning requirements, especially between FMA and the new regulations at part 201.

FEMA's response: It was FEMA's intent to create a single local mitigation plan requirement in publishing the planning regulations at part 201. Since part 201 has been in effect, FEMA has realized that there are few areas of difference between the FMA plans and the part 201 plans. FEMA plans to revise part 201 to clarify that part 201 contains FEMA's mitigation plan requirements for all mitigation grant programs.

Plan adoption: Three commenters asked for clarification on how the State plan is ''formally adopted.'' One comment specifically requested that the plan be approved by the ''Governor's Authorized Representative.''

FEMA's response: An appropriate body in the State must adopt the plan. Depending on the State's established procedures, this could be the State Legislature or the Governor. States with hazard mitigation teams or councils may choose to use these bodies to adopt the plan. At a minimum, the plan must be endorsed by the director of the State agency responsible for preparing and implementing the plan, as well as the heads of other agencies with primary implementation responsibilities. The plan must include a copy of the resolution of adoption, indicating the State's formal adoption of the plan. It is recommended that the plan be formally adopted after FEMA has reviewed the plan and determined that it meets all the other requirements of part 201.

Consultation with Indian tribal governments: One commenter wrote that FEMA did not fulfill its requirement to consult with Indian tribal governments prior to issuing this rule.

FEMA's response: Before FEMA developed the interim rule, the agency met with representatives from State and local governments and the Bureau of Indian Affairs to discuss the new planning requirements of section 322 of the Stafford Act. The same opportunity for comment was offered to all parties. FEMA received valuable input from all attendees, which helped FEMA to develop the interim rule. Also, since FEMA published the interim rule, it has coordinated more directly with Indian tribal governments, and with the organizations that represent them. For example, in conjunction with the National Congress of American Indians, FEMA hosted a Tribal Mitigation Conference in October 2002 at the Ak-Chin Indian Community, Arizona. This conference provided FEMA with an opportunity to better understand its responsibilities relating to Indian tribal governments and to build a working relationship with many of the Indian tribal representatives. A follow-up conference was held at the Salish Kootenai Community, Montana in August 2003. As a direct result of these conferences, FEMA developed an EMI resident course titled ''Mitigation for Tribal Officials.'' This course provides a direct opportunity for coordination and information sharing between Indian tribal representatives and FEMA, resulting in refinements to FEMA's Indian tribal policy and guidance.

Indian tribal governments and mitigation planning: Three commenters wrote that the interim rule contributes to a loss of sovereignty of Indian tribal governments.

FEMA's response: FEMA sees no impact on the sovereignty of Indian tribal governments as a result of these regulations. FEMA recognizes that Native American Tribes are sovereign States. Although § 201.2 states that Indian tribal governments who chose to act as subgrantees are accountable to the State grantee, Indian tribal governments are not required to act as subgrantees. Furthermore, in § 201.3(e), Indian tribal governments may interact directly with the Federal government, or may choose to apply through a State as a subgrantee. This allows for an Indian tribal government to have the flexibility of either applying directly to FEMA for mitigation assistance, or, where the Indian tribal government has a working relationship with a State, apply through the State as a subgrantee. Some Indian tribal governments have participated on local level multi-jurisdictional plans, which have allowed them to participate in FEMA's mitigation programs while they gain expertise and management capability. It is entirely at the discretion of the Indian tribal government and the State whether funding should be sought by Indian tribal governments directly from FEMA or through the State.

Edits to § 206.434(d): One commenter requested that in § 206.434(d), FEMA make available 7 percent of any unspent HMGP funds currently available to the

States regardless of declaration date, and remove the word ''tribal.''

FEMA's response: Section 322 of the Stafford Act (42 U.S.C. 5165) limits 7 percent of the HMGP funds to be spent on mitigation planning, and since Indian tribal governments are eligible for mitigation funding, FEMA is unable to make them ineligible for HMGP planning grants.

Technical assistance: One commenter wrote that mitigation planning has great public value for Indian tribes; however, Indian tribes do not have the financial resources or the technical capacity to undertake such exercises, and that the rule seems to overlook the role of technical assistance.

FEMA's response: FEMA believes that technical assistance is critical to successful mitigation at all levels of government. FEMA has been working to technically assist all Federally-recognized Indian tribal governments regarding the availability of grant funding, training opportunities, as well as program requirements.

The definition of ''Indian tribe:'' One commenter wrote that the term ''Indian tribe'' should be clarified to identify if FEMA means all Indian tribes, just Federally-recognized Indian tribes, or those tribes with either Federal or State recognition.

FEMA's response: The term ''Indian tribe'' means all Federally recognized Indian tribes. Section 201.2 includes the definition for Indian tribal government: ''* * * any Federally recognized governing body of an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of Interior acknowledges to exist as an Indian tribe'' under the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

Enhanced State Mitigation Plans: Six commenters asked for additional clarification regarding Enhanced State Mitigation Plan requirements.

FEMA's response: In July 2002, FEMA provided guidance titled ''Multi-Hazard Mitigation Planning Guidance under the Disaster Mitigation Act of 2000'' on the development of Enhanced State Mitigation Plans, FEMA revised that guidance in March 2004. These documents are available through FEMA regional offices, and the 2004 guidance, which retains the 2002 guidance but includes more explanations and examples, is available on the FEMA Web site at *http://www.fema.gov/plan/mitplanning/index.shtm.* These documents provide guidance on implementing each section of the enhanced plan requirements. FEMA established the criteria for enhanced plans to provide a more qualitative and less quantitative basis for evaluating the plans. In addition, FEMA's policy for reviewing enhanced plans has been to establish a panel consisting of two State representatives, staff from two FEMA Regions, and two FEMA Headquarters staff to review and evaluate the plan. This practice makes the plan review process more transparent and fair and provides States with an opportunity to see how the process works. As of August 2007, there are 9 States with approved Enhanced Mitigation Plans.

Confusion regarding § 201.5(b)(4): Commenters wrote that there is confusion regarding § 201.5(b)(4), which states: ''Demonstration that the State is committed to a comprehensive state mitigation program, which might include any of the following.''

FEMA's response: The list of items in § 201.5(b)(4)(i) through (vi) are provided as examples of that commitment, and are not expected to be addressed in every plan.

State ability to satisfy NEPA requirements: One commenter wrote that States should not be required to ensure that all environmental reviews (categorical exclusions, environmental impact statements, etc.) are completed because they are incapable of performing an environmental assessment or environmental impact statement.

FEMA's response: Section 201.5(b)(2)(iii)(B) requires States to prepare and submit accurate environmental reviews and benefit-cost analyses. FEMA concurs that it is FEMA's responsibility to develop the environmental documentation, in compliance with the National Environmental Protection Act (NEPA). However, FEMA's position is that the State is responsible for and is capable of ensuring that all appropriate information necessary to prepare the NEPA documentation is provided with project applications.

Documentation of capability to manage HMGP: One commenter expressed concern regarding how the Enhanced State Mitigation Plan requirement in § 201.5(b)(2)(iii), ''[d]emonstration that the State has the capability to effectively manage the HMGP as well as other mitigation grant programs, including a record of the following,'' would be implemented.

FEMA's response: FEMA recognized that it would be difficult for States to provide documentation of their capability in this section, so FEMA developed a policy that allows the Region and State to work together to complete the documentation for this requirement. This policy appears in the ''Multi-Hazard Mitigation Planning Guidance under DMA2000, Part 2 Enhanced State Mitigation Plans, Program Management Capability,'' which can be found at: *http://www.fema.gov/library.* For the initial Enhanced Plan approval, a State would be evaluated on their capability to effectively manage the HMGP as well as other mitigation grant programs over the previous four quarters. For subsequent plan update approvals, the State would be evaluated based on demonstrated capability for the full 3 years the plan had been in effect.

Private Nonprofit entities: One commenter asked for more clarification regarding the planning requirements for private nonprofit entities (PNPs).

FEMA's response: Private nonprofit (PNP) organizations, especially those that may be eligible applicants for hazard mitigation projects under 44 CFR part 206, should participate in the development of the local mitigation plan. If a PNP has fully participated in the development and review of the local plan, it is not necessary for the PNP to approve/adopt the plan, as long as it is adopted by the local jurisdiction. PNP applicants for HMGP project grants do not need to have an approved multi-hazard mitigation plan in order to receive HMGP project funds. However, FEMA has developed a policy for PNP project applications; in order for the applications to be approved, the jurisdiction in which the project is located should have an approved plan, and the project must be consistent with the plan's goals and objectives. For FEMA's PDM program, PNPs are not eligible subapplicants, but an eligible local government could apply for a grant to mitigate a PNP facility.

Rural Electric Cooperatives: One commenter wrote that a discrepancy exists regarding rural electric cooperatives. The commenter wrote that public power States with electrical services provided by districts administered by elected officials cover multiple local jurisdictions. These types of cooperatives do not conform to the definition of local jurisdictions and potentially multiple districts would have to be included in every local plan to qualify for future funding. This problem must be addressed in the rule.

FEMA's response: Multi-jurisdictional utility PNPs, including Rural Electric Cooperatives (RECs), which sometimes span several counties, are eligible subapplicants for assistance under HMGP. Their infrastructure often sustains damage from severe snow and ice storms, and they frequently seek HMGP funding after disaster declarations from these storms to mitigate future similar losses. RECs are

treated as PNPs for the purposes of disaster assistance provided by FEMA under the Stafford Act. They are not considered local governments. This distinction is important, because current regulations provide only for local governments, not PNPs, to meet the planning requirement by submitting a local mitigation plan (LMP) to FEMA. For PNPs such as RECs or other multi-jurisdictional utilities, FEMA is identifying two ways in which RECs may meet the mitigation planning requirements to ensure that projects funded by HMGP are consistent with the mitigation strategies of the State, Tribal, and/or local jurisdiction in which the project is located: the local jurisdiction(s) within which the REC mitigation project is located must have FEMA approved LMPs, or the FEMA approved State Mitigation Plan must address RECs. Further guidance is available on this topic on FEMA's Web site at *http://www.fema.gov.*

Small and impoverished communities: One commenter wrote that FEMA should identify criteria it will use to determine if a State identified community qualifies as ''small and impoverished.''

FEMA's response: The term ''small and impoverished communities'' is defined in § 201.2. This definition combines the term in section 203 of the Stafford Act, as amended by the Disaster Mitigation Act of 2000, with criteria for ''economically disadvantaged'' communities as used by the U.S. Environmental Protection Agency under their National Watershed Initiative. Communities can compare their per capita income to the Bureau of Economic Analysis's per capita income for the U.S. as a whole, issued annually; local unemployment data can be compared with the national unemployment rate according to the U.S. Bureau of Labor Statistics, also issued annually. Further guidance on FEMA's criteria for determining small and impoverished communities can be found on pages 1–10 of the FY 2007 Pre-Disaster Mitigation Program Guidance, which can be found at *http://www.fema.gov/library/viewRecord.do?id=2095.*

State authority: Two commenters wrote that FEMA was taking away the State's authority to administer and manage mitigation programs. The commenters wrote that States should be able to approve local mitigation plans and prioritize mitigation funding decisions.

FEMA's response: FEMA believes it is important to establish a national standard for local mitigation plans and to ensure that local jurisdictions are being evaluated based on the same criteria across the Nation. States may introduce additional criteria for their localities, but FEMA may only enforce the requirements of this rule. FEMA has worked to establish a solid baseline for mitigation plans, especially at the local level, and FEMA continues to work to ensure that plans are being evaluated in a fair and consistent manner. FEMA believes that the planning process supports the State's authority to administer the grant programs. By engaging in State-established planning processes, funding decisions can be made based on State-developed mitigation strategies.

Listening session: One commenter wrote and questioned the value of listening sessions that were held to gather comments and suggestions on implementing the planning requirements.

FEMA's response: The intent of the listening sessions was to gain input at an early stage from State and local officials, as well as other Federal agencies, for FEMA to consider as it began to develop regulations to implement the planning requirements. Much of the information generated by the listening session was very useful to FEMA in developing these regulations.

Definition of local government: One commenter wrote to request the word ''community'' be used rather than ''jurisdiction'' regarding the terminology used to discuss the local entity developing the local level plan.

FEMA's response: FEMA uses the term ''jurisdiction'' rather than ''community'' since the term ''jurisdiction'' is broader than the term ''community.'' A jurisdiction could be a county, city, township, parish, or other local entity. Furthermore, within FEMA, the term ''community'' is closely linked to the local entity that implements the National Flood Insurance Program.

Local plan eligibility: One commenter wrote that local governments should be able to receive assistance if the local jurisdiction has an approved plan, even if the State does not have an approved plan.

FEMA's response: The State is responsible for administering FEMA's programs. The requirement for a State plan as a condition for local governments to receive non-emergency disaster assistance was originally established through section 409 of the Stafford Act (42 U.S.C. 5176). However, section 409 was repealed by the Disaster Mitigation Act of 2000. In addition, every State has met the planning deadline thus far, and FEMA is confident that States will continue to meet the planning deadlines, thus ensuring that local plans can be approved.

Availability of post-disaster assistance: Two commenters wrote to ask how post-disaster assistance would be affected by the lack of an approved State Mitigation Plan by the established deadline.

FEMA's response: The post-disaster assistance that would be withheld by the lack of an approved State Mitigation Plan includes Public Assistance, categories C–G, HMGP, and Fire Management Assistance. As stated above, however, every State has thus far met the planning deadlines, so no post-disaster assistance has been withheld due to a State's lack of an established State plan.

State planning: One commenter asked what the purpose of the State mitigation planning process is, how the term ''effectiveness'' will be measured, how the ''factual basis'' for proposed activities will be established, how State laws should be evaluated, and stated that the requirement that the plan contain an overview of ''all natural hazards'' that can affect the State is too comprehensive.

FEMA's response: FEMA's approach to the planning process is to establish a mechanism for State and local governments to make informed decisions regarding their risk reduction activities rather than creating a prescriptive list of requirements. Section 201.4(a) describes the purpose of the State Mitigation Plan: ''[t]he mitigation plan is the demonstration of the State's commitment to reduce risks from natural hazards and serves as a guide for State decision makers as they commit resources to reducing the effects of natural hazards.'' FEMA looks to the State to establish baselines by which the State will measure the effectiveness of the programs and activities that it has identified that reduce its risks. FEMA is evaluating the effectiveness of plans based on how well the States document the planning process. The requirement regarding the ''factual basis'' for activities means that the State should be developing its mitigation strategy based on the facts (risks and vulnerabilities) established in its risk assessment. State laws would be evaluated based on the criteria established by the State to do so. Regarding the requirement that the plan contain overviews of all natural hazards, FEMA requires the State to *identify* all natural hazards that can affect the State, but only to *evaluate* those that pose the greatest risk (as determined by the State). This distinction ensures that natural hazards are not overlooked and can assist in future evaluations of the

State's risk, by summarizing the process used to conduct the risk assessment.

Generic plans: One commenter wrote that the required elements of a mitigation plan, such as listing facilities located in hazard areas or estimating the potential dollar losses to vulnerable structures, may produce generic plans or lists that are simply trying to comply with specifications rather than truly reducing risk.

FEMA's response: The type of information indicated above is essential to developing a thorough risk assessment. It is not FEMA's intent to require plans that merely list information, but, rather, have States, Indian tribes, and local jurisdictions carefully analyze information to better establish their risks and vulnerabilities. FEMA will continue to provide guidance regarding the level of detail necessary in the planning process, and to ensure that the process remains relevant to those who develop plans.

Public Assistance: Two commenters wrote that there should be a link between the mitigation plan and mitigation activities that might be funded through FEMA's Public Assistance program.

FEMA's response: FEMA concurs with these comments, and continues to coordinate within the agency to ensure that our programs and requirements are implemented as consistently as possible.

Link between State and local plans: Four comments requested clarification of the requirement that State Mitigation Plans be linked to local mitigation plans.

FEMA's response: Section 201.4(c)(4) requires that State Mitigation Plans describe the processes for incorporating local planning efforts into the statewide plan and prioritizing assistance to local jurisdictions. The intent of this section is to ensure that the State mitigation strategies and priorities can be evaluated and incorporated into the local mitigation plans, as appropriate. In addition, risk assessment and other data used in the development of the State plan can be used by local jurisdictions developing their plans, and more site specific data developed in the local mitigation plans may be useful to the State as it progresses in the development of any updated State Mitigation Plans. When the State plans were originally prepared under this regulation, there were few local plans that met FEMA's planning requirement under part 201. Therefore, States had limited local information on which to base their plans. Since then, many local plans have been approved and adopted, providing States with the opportunity to better coordinate with local jurisdictions.

Types of resources for Local Mitigation Planning: Two commenters requested additional information regarding the types of resources that are to be used to obtain information and data for the risk assessment and mitigation strategy in local mitigation plans.

FEMA's response: The information used to develop the local mitigation plans will be driven by local needs, State priorities, and the availability of information and data. Our guidance has been for jurisdictions to do a reasonable search for risk assessment information, to use the ''best available data'' for the analysis, and to indicate how any lack of information or data will be addressed (if at all) in future plan updates. The mitigation strategy should be vetted through the process established by the local mitigation planning team, which should include a public involvement process.

Use of HMGP Planning Funds: One commenter asked whether the 7 percent HMGP planning funding can be used for plan amendments at the local level.

FEMA's response: HMGP planning funds can be used to update or amend mitigation plans.

Privacy concerns: One comment stated that while State and local mitigation plans should identify factors that will be considered when developing specific projects, the plan should not be required to identify specific projects or properties, because doing so could affect privacy concerns and the perceived impact on land values.

FEMA's response: FEMA agrees that specific property addresses should not be included in the plan; however, it may be appropriate to identify project areas for certain risk mitigation activities. For example, as part of a mitigation strategy, a list of properties or areas being considered for acquisition should be prepared, but the specifics regarding property addresses should remain within project applications and not in the plan document itself.

Definition of mitigation: Two commenters wrote that the term ''sustained'' must be clarified to avoid confusion as to what specifically is appropriately termed hazard mitigation and what will be allowed for funding under FEMA programs. The commenters also noted that the term is at odds with the definition found in § 206.2(14).

FEMA's response: As the commenters note, § 206.2(14)'s definition of ''Hazard Mitigation'' is any cost-effective measure which will reduce the potential for damage to a facility from a disaster event, while § 201.2's definition of ''Hazard Mitigation'' is any sustained action taken to reduce or eliminate the long-term risk to human life and property from hazards. The difference between the part 201 and part 206 definitions of hazard mitigation is that ''sustained'' is related to mitigation planning under part 201, and ''cost-effective measures'' is related to grant activities under part 206. The definition for hazard mitigation found in part 201 is meant to allow State, tribal, and local officials latitude to evaluate a wide range of options that might reduce risk; the term ''sustained'' was added to the definition in part 201 to make clear that mitigation activities should be a continuous undertaking, and is consistent with the long-term explanation of hazard mitigation projects in part 206.

Definition of local government: One commenter wrote that the definition of local government was too broad, covering subdivisions of political jurisdictions, and that it is important to look at the community as a whole.

FEMA's response: FEMA understands the commenter's concern. However, section 102 of the Stafford Act (42 U.S.C. 5122) contains a definition for ''local government,'' and this is the definition that FEMA closely follows. FEMA agrees that it is important to look at the whole community. FEMA developed guidance titled ''Multi-Jurisdictional Mitigation Planning,'' (FEMA 386–8), which assists jurisdictions in developing plans that can look at the whole community. A plan developed for a larger community can be adopted by sub-jurisdictions (as long as those sub-jurisdictions participated in the process), which ensures a sub-jurisdiction's eligibility for mitigation grant projects.

Assistance affected by lack of plan: One commenter wrote that §§ 201.4(a) and 201.6(a)(1) are inconsistent with each other, as the former eliminates eligibility for all assistance other than emergency measures for all local governments in a State, if the State fails to secure approval of a plan, while the latter only eliminates eligibility for funding if local entities fail to complete a plan. Since the State is dependent upon local mitigation planning efforts for data, the two sections should be consistent.

FEMA's response: The State Mitigation Plan is required in order for non-emergency disaster assistance, as well as mitigation grants, to be made available throughout the State. The local mitigation plan is required in order to receive mitigation project grants. Other

non-emergency assistance is not affected by the lack of a local mitigation plan. FEMA recognizes that the initial State planning efforts will be limited by the lack of local mitigation plans, but updated State plans will be able to incorporate local level data as it becomes available.

''Ongoing State planning efforts:'' One commenter asked what is meant by ''ongoing state planning efforts'' in § 201.4(b).

FEMA's response: Section 201.4(b) states that an effective planning process is essential in developing and maintaining a good standard State Mitigation Plan. ''Ongoing state planning efforts'' means that the process should include continued coordination to the extent possible with other State agencies, appropriate Federal agencies, and additional interested groups. It is up to the State to determine what other planning processes might be affected by the mitigation planning process.

Vulnerability Assessments: One comment stated § 201.4(c)(2)(ii) would require the States to conduct vulnerability assessments based on local assessments of hazards and risk, but that it is not clear if the States would have to abandon their existing Hazard and Vulnerability Analysis methodology. Also, these risk analyses would have to be based on local participation, which cannot be mandated in many States.

FEMA's response: FEMA does not intend for any State to abandon their existing Hazard and Vulnerability Analysis methodologies. The State Mitigation Plans should document the process used to gather and analyze the data, and explain the methodology in determining vulnerability assessments. This documentation of previous hazard events and potential future hazard events will ensure that current and future users of the mitigation plan will be able to understand the basis for the decisions made in the plan. FEMA agrees that local participation in the planning process cannot be mandated, but where there are local plans, the available data and information should be used.

State risk assessment: One commenter questioned the level of detail required in the State risk assessment. The commenter stated that requiring the State Hazard Mitigation Plan to contain the potential losses to each structure, facility, or infrastructure identified as a risk by local governments for being located in an identified hazard area is redundant of the local mandates.

FEMA's response: Section 201.4 requires the State plan to provide an overview and analysis of potential losses to identified vulnerable structures based on estimates provided in local risk assessments. The intent is to look more broadly on risk and vulnerability than can be done at a local level. The local mitigation plans provide the necessary detail, but the State Mitigation Plan is where the data can be evaluated and summarized to determine overall vulnerabilities and to identify areas that may need additional assistance.

State mitigation strategy: One commenter questioned the level of detail required in the mitigation strategy section of the State Mitigation Plan. The commenter wrote that States may not be able to properly represent local actions and projects with respect to the elements in § 201.4(c)(3)(iii) because it would be quite costly to fully incorporate data for every local plan.

FEMA's response: Section 201.4 (c)(3)(iii) is based on the risk assessment portion of the plan and includes actions that have been identified through the planning process. These actions may be statewide in nature (such as adopting statewide building codes or establishing a multi-agency grant evaluation panel). It is not intended that every activity or action identified in local mitigation plans would be specifically addressed in the State plan. The State plan, through the description of the planning process, the establishment of the mitigation strategy, and the plan maintenance process, will dictate how future plan updates will be evaluated. FEMA will look at what was completed, deleted, or deferred from the plan and the justification for the process.

Intense development pressure: One comment asked for clarification of the term ''intense development pressure.''

FEMA's response: FEMA believes that States can reasonably interpret and apply the term ''intense development pressure.''

Prioritizing HMGP funds: One commenter requested that FEMA should consider allowing each State to prioritize the use of HMGP funds generated by a disaster based on whether the community has a multi-hazard plan.

FEMA's response: FEMA agrees with this comment. Program regulations, policy, and guidance allow States to prioritize the use of HMGP funds.

Mandatory planning: One commenter wrote that mitigation planning is a mandatory requirement, yet there is no guaranteed funding.

FEMA's response: The mitigation planning requirement is not an independently enforced, mandatory requirement. Rather, mitigation planning is a condition of eligibility for receiving certain assistance under the Stafford Act. State mitigation planning can result in reduced disaster losses. While there is no guaranteed funding for mitigation planning, FEMA has provided over $157 million in mitigation planning grants to States, Indian tribal governments, and local jurisdictions from February 2002 through March 2007. Projects are funded based on a thorough understanding of the local risks and vulnerabilities and the mitigation strategy outlined in the local mitigation plan.

Executive Order 12898: One comment stated that the rule substantially affects human health or the environment under Executive Order 12898 by creating a planning requirement that will be difficult for large urban cities and rural poor areas to meet, thereby denying those jurisdictions the opportunity to apply for HMGP project grants.

FEMA's response: FEMA does not agree that the rule has a disproportionate, adverse impact on minority or low income populations or on large urban cities. After the first interim rule, FEMA recognized that insufficient time was originally allowed to prepare the plans, and issued another IR on October 1, 2002 that extended the planning requirement for local plans under the HMGP from November 1, 2003 to November 1, 2004. Currently, over 14,000 jurisdictions now have approved local level mitigation plans, covering over 50 percent of the United States population. Large urban cities generally have their own planning and emergency management departments with staff who can carry out the work related to preparing the plan and/or direct the efforts of contractors. FEMA also recognized the potential administrative burden on jurisdictions that did not budget for the costs associated with the development of mitigation planning, and FEMA has provided funding opportunities for jurisdictions (through planning grants) to allow projects to proceed in minority or low income populations. This eases the potential burden on these jurisdictions while maintaining the statutory intent. Through these programs, FEMA has approved over 1,400 planning grants between February 2002 and March 2007 with obligated Federal grants of over $157,000,000.

In addition, § 201.6(a)(3) allows for an exception, in extraordinary circumstances, for a jurisdiction to receive an HMGP project grant without an approved plan. In this circumstance, the jurisdiction must agree to develop a plan within 12 months of receiving the project grant. This exception allows small or impoverished communities or

jurisdictions with limited resources the opportunity to apply for project funds, while meeting the planning requirement. This exception is available after a disaster, which also allows FEMA to provide resources to jurisdictions that need to complete their mitigation plan. These resources can include training and workshops, new data leading to the risk assessment, assistance in holding and facilitating community meetings, as well as the grant funding for plan development. This allows such potentially disadvantaged communities to receive HMGP project grants concurrent with the development of their mitigation plan, and FEMA will work with those jurisdictions to assist them in meeting the planning requirement. Therefore, FEMA has implemented the planning requirement in a manner that addresses any potential disproportionate adverse effect on minority or low income populations by providing technical assistance and funding opportunities to meet the requirement, as well as exceptions allowing project grants to proceed even where the regular planning requirement is not yet met.

45-day FEMA review: One comment wrote to express concern with the regulatory language that FEMA will review mitigation plans within 45 days, ''whenever possible,'' yet State, tribal, and local governments are required to meet firm deadlines.

FEMA's response: While FEMA makes every effort to review all plans in a timely manner, it must have the flexibility to have an extended review period beyond 45 days, if necessary. FEMA cannot control for disaster activity, field deployments, or large numbers of plans being submitted within a short timeframe, but is not aware of any programs or project grants being denied due to the lack of a plan being approved. The FEMA Regional offices have established draft plan review procedures that expedite the review and approval of final plans.

Multi-jurisdictional plans: One comment requested additional information regarding criteria for multi-jurisdictional planning.

FEMA's response: FEMA has developed a guidance document titled ''Multi-Jurisdictional Mitigation Planning'' (FEMA 386–8). This document contains all of the guidance developed to date regarding multi-jurisdictional planning, and provides direction to those considering this type of planning process. This document can be obtained through any FEMA Regional office or on the FEMA Web site at *http://www.fema.gov/plan/mitplanning/index/shtm*.

Disaster funding restrictions and planning: One commenter wrote that the Disaster Mitigation Act of 2000 did not intend to restrict disaster assistance to individuals due to the lack of a mitigation plan, and that failure to complete a plan should result in the denial of the increased mitigation dollars, not the entire mitigation grant program.

FEMA's response: FEMA agrees that assistance to individuals and other emergency disaster assistance should not be impacted by the lack of a State Mitigation Plan, and have provided for this exception in the regulation in § 201.3(c)(1). However, regarding non-emergency disaster assistance, State Mitigation Plans are critical to the disaster recovery process. The State establishes the framework for the recovery regarding how to address specific issues arising from the disaster, how to address building codes in the recovery effort, and to set priorities for mitigation activities. The requirement for this plan is based on over 30 years of experience that State mitigation planning can result in reduced disaster losses. Since State-level mitigation plans have been required for over 30 years, and section 322 of the Stafford Act is intended to increase mitigation activities, FEMA allows for Enhanced Plans, which make States eligible for the increased share of HMGP funding.

Vulnerability information in State Plans: One commenter wrote that every structure, infrastructure, and critical facility is vulnerable to the risk of disasters and the estimated total loss is potentially the total assessed value of all properties in a jurisdiction, excluding land; therefore, the requirement to analyze these losses as indicated in § 201.4(c)(2)(iii) is a meaningless and burdensome task.

FEMA's response: Section 201.4 requires the State to provide an overview and analysis of potential losses in order to develop a strategy for reducing its risk and vulnerability. If an entire State is subject to losses from disasters, it would be important to assess that risk and determine the best approach to reducing vulnerabilities. FEMA has designed the planning criteria so that each State can develop its own approach to determining how to mitigate its risks.

Publish as a proposed regulation: One comment stated that the regulation should be published as a proposed regulation to allow adequate consideration of the comments from State and local governments.

FEMA's response: As FEMA noted in the interim rule, these regulations needed to be effective in order for State and local governments to be eligible for and to receive mitigation funds as soon as possible. The public benefit of an interim rule is to assist States and communities assess their risks and identify activities to strengthen the larger community in order to be less susceptible to disasters. For these reasons, delaying the effective date of this rule would not have furthered the public interest. Furthermore, prior to this rulemaking, FEMA hosted a meeting where interested parties provided comments and suggestions on how FEMA could implement planning requirements. FEMA has also considered comments provided by States and local governments during the rulemaking process in implementing the planning requirements. The agency will continue to assess the utility and practicality of the requirements based on the experiences of States, tribes, and local governments.

Mitigation under the Public Assistance Program: One comment requested that FEMA change § 206.226(c) so that the hazard mitigation measures identified in a FEMA approved local hazard mitigation plan and associated with facilities and sites which subsequently suffer disaster related damage in a declared disaster are automatically incorporated into the entity's public assistance hazard mitigation proposal on the Project Worksheet as an eligible item.

FEMA's response: Activities funded under § 206.226 must meet the basic eligibility requirements of the Public Assistance program. While mitigation measures identified in the approved mitigation plan may be worthwhile actions, they may not meet the requirements of the Public Assistance program, and would not be eligible.

New language for the regulation: A number of comments proposed specific language revisions. One commenter wrote that the following language should be added to the FEMA responsibilities set out in § 201.3(b)(2), ''* * * and assist the [S]tate in the identification of the appropriate mitigation actions that a [S]tate or locality must take in order to have a measurable impact on reducing or avoiding the adverse effects of a specific hazard or hazardous situation'' because requiring the State to coordinate all State and local activities exceeds the State's capability and authority with regard to local control. Another commenter wrote that § 201.3(c) be revised to read ''[t]he key responsibilities of the State are to coordinate all State and regional activities relating to hazard evaluation and mitigation, and to the extent

possible, local activities relating to hazard evaluation and mitigation.'' One commenter wrote that § 201.3(c)(4) should be removed as it is redundant to Subpart N, and that § 201.4(c)(4)(iii) should be stricken as it conflicts with § 201.4(c)(3)(iii). One comment suggested that FEMA should add the following to § 206.401: ''* * * except where the local or [S]tate entity has adopted, in the post disaster period, new codes, standards, and ordinances that decrease risk to facilities from natural and manmade hazards.'' One comment asked that the language in § 206.432(b)(1) and (2) replace ''not to exceed'' with ''equal to.''

FEMA's response: Regarding the request to add ''* * * and assist the [S]tate in the identification of the appropriate mitigation actions that a [S]tate or locality must take in order to have a measurable impact on reducing or avoiding the adverse effects of a specific hazard or hazardous situation'' to FEMA's responsibilities; FEMA believes that the existing description requiring FEMA to provide technical assistance covers this type of activity, if necessary, but does not require the provision of the assistance in every situation, where it might not be required. In addition, FEMA believes that State and local jurisdictions often have a better understanding than FEMA of what is an appropriate mitigation action given the local conditions.

Regarding the request to revise § 201.3(c) to read ''[t]he key responsibilities of the State are to coordinate all State and regional activities relating to hazard evaluation and mitigation, and to the extent possible, local activities relating to hazard evaluation and mitigation;'' FEMA understands that some States lack the authority to mandate local actions, but FEMA believes that this section can be (and is) interpreted broadly enough to accommodate this situation. The proposed language change emphasizes regional over local activities, and FEMA believes that if the State coordinates regional activities, it has met the requirements of this section, given the broad interpretation of local activities.

Regarding the comment that § 201.3(c)(4) should be removed as it is redundant to Subpart N; FEMA believes that it is important to identify a potential source of funding for planning within the planning regulation, even if it addressed in Subpart N.

Regarding the comment that § 201.4(c)(4)(iii) should be stricken as it conflicts with § 201.4(c)(3)(iii); FEMA believes that while the two sections are similar, they are not identical and both need to be retained. Under the Mitigation Strategy (§ 201.4(c)(3)(iii)), the intent is to identify a range of mitigation actions and activities that are prioritized based on a variety of criteria and under the Coordination of Local Mitigation Planning (§ 201.4(c)(4)(iii)), the requirement is to prioritize communities who might most benefit from either planning or project grants (*i.e.* communities with high risk or multiple repetitive loss properties).

Regarding the comment that FEMA add the following to § 206.401: ''* * * except where the local or [S]tate entity has adopted, in the post disaster period, new codes, standards, and ordinances that decrease risk to facilities from natural and manmade hazards;'' FEMA disagrees with this change since it would conflict with regulations guiding the restoration of damaged facilities under § 206.226(d), and would substitute a very broad qualitative criterion of codes in general, as opposed to the five very specific criteria in the current regulation, which specifically requires that codes must be written, adopted, universally applied, and have demonstrated evidence of prior enforcement.

Regarding the comment that that the language in § 206.432(b)(1) and (2) replace ''not to exceed'' with ''equal to;'' it would not be appropriate to lock in the HMGP funding level by replacing ''not to exceed'' with ''equal to'' since Congress has already demonstrated a willingness to modify the HMGP funding formula.

In the future, FEMA intends to engage in additional discussions with interested groups on how to improve the planning process, which may include changes to the regulatory language.

Hazard Mitigation Surveys: One comment requested that FEMA restore the Hazard Mitigation Early Implementation Strategy, the Hazard Mitigation Surveys, and the Interagency Hazard Mitigation Survey requirements.

FEMA's response: FEMA will consider restoring these post-disaster surveys as part of the ongoing implementation of the Hazard Mitigation Grant Program.

Comments on the Second IR

Support for the extension of the date: One comment encouraged the interim rule to become final, and supported the extension of the date by which State and local governments must develop mitigation plans as a condition of grant assistance to November 1, 2004.

FEMA's response: FEMA agrees and had already extended the date by which State and local governments must develop mitigation plans.

Plan updates: One commenter asked about the process to bring existing mitigation plans into compliance with the regulations at part 201, and how plans are to be updated when they expire.

FEMA's response: Plans approved prior to the implementation of part 201 must be reevaluated and re-approved by FEMA to ensure that they meet the planning requirements identified in part 201. FEMA has also provided guidance through FEMA's ''Multi-Hazard Mitigation Planning Guidance under DMA2000'' on how plans developed under the FMA program can be upgraded to meet the regulations at part 201. This document may be obtained through any Regional office or from the FEMA Web site at *http://www.fema.gov/plan/mitplanning/index.shtm*. In addition, FEMA is in the process of issuing specific guidance on how to update the State, tribal, and local plans when they expire.

Disaster costs and mitigation planning: One commenter asked that FEMA provide each State and community with a detailed analysis of prior disaster assistance outlays by all Federal agencies, an integrated review of all structural projects in the community both as built and proposed, and a legal review regarding the authority of the planning process.

FEMA's response: FEMA will work with State, tribal and local jurisdictions to ensure that they have information generated by FEMA regarding disaster outlays, and has developed guidance through its ''Multi-Hazard Mitigation Planning Guidance under DMA2000'' on how to obtain additional data. This document may be obtained through any Regional office or from the FEMA Web site at *http://www.fema.gov/plan/mitplanning/index.shtm*. Most State, tribal, and local jurisdictions have the authority to develop and implement plans. FEMA encourages the mitigation planning process to be integrated across jurisdictions to ensure that existing data and information is shared and that there is no duplication of effort in gathering and analyzing data.

III. Regulatory Requirements

A. Executive Order 12866, Regulatory Planning and Review

FEMA has prepared and reviewed this rule under the provisions of Executive Order 12866, Regulatory Planning and Review. Under Executive Order 12866, a significant regulatory action is subject to the Office of Management and Budget (OMB) review and the requirements of the Executive Order. OMB has determined that this rule is not a

significant regulatory action. OMB has not reviewed this rule. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The purpose of this rule is to implement section 322 of the Stafford Act, which addresses mitigation planning at the State, local and tribal levels, identifies new local planning requirements, allows HMGP funds to be used for planning activities, and increases the amount of HMGP funds available to States that develop a comprehensive, Enhanced Mitigation Plan. The rule clarifies the requirements for State Mitigation Plans, identifies local mitigation planning requirements before approval of project grants, and requires our approval of an Enhanced State Mitigation Plan as a condition for increased mitigation funding. The rule also implements section 323 of the Stafford Act, which requires that repairs or construction funded by disaster loans or grants must comply with applicable standards and safe land use and construction practices.

FEMA calculates the annual economic impact of the interim rules that this final rule finalizes to be approximately $46,000,000. As this final rule makes no significant change to these interim rules, FEMA is adopting the economic impact estimate of these interim rules as the economic impact of this final rule. The following paragraphs provide a more detailed explanation of the economic impact of this rulemaking.

This rule modifies the State Mitigation planning requirement. Currently, all 50 States, the District of Columbia, 7 territories, and 33 Indian tribal governments have approved State level mitigation plans. FEMA estimates that it takes an average of 2,080 hours for States to prepare State Mitigation Plans to comply with this regulation. Using wage rates from the May 2004, U.S. Department of Labor, Bureau of Labor Statistics (BLS), Standard Occupation Classification (SOC) System, the median hourly wage for urban and regional planners (SOC Code Number 19–3051) is $26.31 per hour. Adding 30 percent to the BLS figure to account for benefits, FEMA has calculated the burden using a wage rate of $34.20 per hour. Since there are a total of 91 State level plans, it is estimated that the one time cost of compliance to submit the State Mitigation plans is $6,473,376. This figure is calculated as follows: $((91 \times 2{,}080) \times \$34.20)$.

These State Mitigation Plans must be updated every 3 years. Since there are a total of 91 State level plans, the cost estimate will assume that, on average, there will be 31 updated plans each year. All States now have existing State Mitigation Plans, and the only continuing requirement is for plan updates. FEMA estimates that it would take an average of 320 hours for States to prepare plan updates. Using wage rates from the May 2004, U.S. Department of Labor, BLS, SOC System, the median hourly wage for urban and regional planners (SOC Code Number 19–3051) is $26.31 per hour. Adding 30 percent to the BLS figure to account for benefits, FEMA has calculated the burden using a wage rate of $34.20 per hour. Therefore, it is estimated that the annual cost of compliance to submit the updates to State Mitigation Plans is $339,264. This figure is calculated as follows: $((31 \times 320) \times \$34.20)$.

This rule also allows States to submit an Enhanced State Mitigation Plan, should they wish to increase the amount of HMGP funds they receive from 15 percent to 20 percent. States may now opt to create an Enhanced Mitigation Plan to receive additional funding. As of March 2007, there were 11 States with Enhanced Mitigation Plans. Two were approved in 2004, four in 2005, three in 2006, and two in 2007. These plans must be renewed every 3 years. As of July 2, 2007, there were only nine approved plans as two States opted not to renew their Enhanced Mitigation Plan.

Once a State has a FEMA-approved Enhanced Mitigation Plan, its only remaining requirement is to review and update it once every 3 years. Using the data from the 5 years since the first interim rule was published the average number of plans submitted in a year is three. The cost estimates will assume three new and three renewal plans submitted to calculate the annual burden.

Again, all States already have existing State Mitigation Plans. FEMA estimates that it would take an average of 320 hours for States to update their Enhanced Mitigation Plan, and an additional 160 hours for States to upgrade an existing Standard State Mitigation Plan to an Enhanced Plan. Since FEMA is encouraging States to update their plans when preparing an Enhanced Plan, the total hours for developing ''new Enhanced Mitigation plans'' is 480 hours (160 hours to upgrade from Standard to Enhanced plus 320 hours to update the plan). Using wage rates from the May 2004, U.S. Department of Labor, BLS, SOC System, the median hourly wage for urban and regional planners (SOC Code Number 19–3051) is $26.31 per hour. Adding 30 percent to the BLS figure to account for benefits, FEMA has calculated the burden using a wage rate of $34.20 per hour. Therefore, it is estimated that the annual cost of compliance to voluntarily submit an Enhanced Mitigation Plan is $82,080. This figure is calculated as follows: $((3 \times 480) \times \$34.20) + ((3 \times 320) \times \$34.20)$.

After its Enhanced Mitigation Plan is approved, pursuant to § 206.432(b), a State is then able to receive an amount equal to 20 percent of the total estimated Federal assistance (excluding administrative costs) provided for a major disaster declaration, instead of 15 percent. The table below reflects all States with Enhanced Plans, each disaster that has been declared in that State since its Enhanced plan was approved, and reflects the amount of HMGP funds it was eligible for. Each State was given funds at the 20 percent rate, however, the 15 percent rate is provided to determine the economic benefit (transfer) received from having the approved Enhanced Plan. In some cases, these are not final lock-in figures, but it is the most accurate data that FEMA has as of August 2007.

TABLE: HMGP FUND ELIGIBILITY FOR STATES WITH ENHANCED PLANS 2004—AUGUST 2007

State	Enhanced plan approved date	Disaster dates declared after enhanced plan	Declaration No.	20% Amount	15% Amount	Difference
WA	July 1, 2004	May 17, 2006	1641	$989,290.00	$741,967.50	$247,322.50.
		December 12, 2006	1671	6,106,627.00	4,579,970.25	1,526,656.75.
		February 14, 2007	1682	7,209,865.00	5,407,398.75	1,802,466.25.
MO	July 2, 2004	March 16, 2006	1631	1,290,726.00	968,044.50	322,681.50.
		April 5, 2006	1635	4,210,525.00	3,157,893.75	1,052,631.25.
		November 2, 2006	1667	128,676.00	96,507.00	32,169.00.
		December 29, 2006	1673	825,000.00	618,750.00	206,250.00.
		January 15, 2007	1676	16,549,000.00	12,411,750.00	4,137,250.00.
		June 11, 2007	1708	Data Unavailable	Data Unavailable	Data Unavailable.
OK	March 18, 2005	January 10, 2006	1623	2,138,136.00	1,603,602.00	534,534.00.
		April 13, 2006	1637	244,990.00	183,742.50	61,247.50.
		February 1, 2007	1677	746,250.00	559,687.50	186,562.50.
		February 1, 2007	1678	7,592,175.00	5,694,131.25	1,898,043.75.
		June 7, 2007	1707	Data Unavailable	Data Unavailable	Data Unavailable.
OH	May 17, 2005	July 2, 2006	1651	1,798,019.00	1,348,514.25	449,504.75.
		August 1, 2006	1656	3,411,736.00	2,558,802.00	852,934.00.
MD	August 26, 2005	July 2, 2006	1652	1,274,514.00	955,885.50	318,628.50.
WI	December 14, 2005	None	NA	NA	NA	NA.
OR	March 7, 2006	March 20, 2006	1632	1,511,700.00	1,133,775.00	377,925.00.
		December 29, 2006	1672	921,824.00	691,368.00	230,456.00.
		February 22, 2007	1683	687,362.00	515,521.50	171,840.50.
FL	August 22, 2006	February 3, 2007	1679	4,044,445.00	3,033,333.75	1,011,111.25.
		February 8, 2007	1680	263,916.00	197,937.00	65,979.00.
PA	August 23, 2006	February 23, 2007	1684	1,822,812.00	1,367,109.00	455,703.00.
IA	January 3, 2007	March 14, 2007	1688	Data Unavailable	Data Unavailable	Data Unavailable.
		May 25, 2007	1705	Data Unavailable	Data Unavailable	Data Unavailable.
VA	March 14, 2007	None	NA	NA	NA	NA.
Totals				63,767,588.00	47,825,691.00	15,941,897.00.

These disasters range in date from March 16, 2006 to Feb. 23, 2007, which is roughly one year. A total of $63,767,588 in HMGP funds were granted at the 20 percent rate due to the fact that these States had approved Enhanced Mitigation Plans. This 5 percent increase translates to an additional $15,941,897 in funds distributed as a result of this regulation.

This rule also requires that after November 1, 2004, a local mitigation plan must be approved in order to receive HMGP project grants. As of June 2007, over 2,500 local mitigation plans covering over 13,000 jurisdictions have been approved. FEMA receives and approves approximately 280 local plans per year. The requirement of a local plan does not affect the amount of HMGP funds that were available to the jurisdiction before this regulation. The economic impact results from the cost to create the plan. If a local jurisdiction is covered by a plan, it will receive the same amount of HMGP project funds it would have received before this requirement was created.

From experience over the past 5 years, FEMA expects approximately 280 new local plans to be developed annually. Once a local jurisdiction has a FEMA-approved Mitigation plan, they are required to review and update it once every 5 years. FEMA averages 280 plan updates per year. FEMA estimates that it would take an average of 2,080 hours to develop new plans, and 320 hours for plan updates, plus 8 hours for the State to review the local plan. Using wage rates from the May 2004, U.S. Department of Labor, BLS, SOC System, the median hourly wage for urban and regional planners (SOC Code Number 19–3051) is $26.31 per hour. Adding 30 percent to the BLS figure to account for benefits, FEMA has calculated the burden using a wage rate of $34.20 per hour. Therefore, it is estimated that the annual cost of compliance is $(((280 \times 2{,}080) + (280 \times (320 + 8)) \times 34.20) =$ $23,059,008.

Under § 206.434(d), up to 7 percent of the State's HMGP grant may be used to develop State, tribal and/or local mitigation plans. This change does not have any effect on the actual amount of HMGP funds that a State is eligible for, but allows the cost to develop plans described above to be offset by HMGP planning grants. This regulation simply expands the eligible use of HMGP funds to include the development of mitigation plans. States are not required to use the funds for this purpose. Any HMPG funding spent on mitigation planning is accounted for in the analysis above, under each category of planning (Standard State Mitigation Plans, Enhanced State Mitigation Plans, and local mitigation plans). For the reasons stated above, the annual impact of this rule on the economy is approximately $46,000,000. This figure is calculated as follows: ($6,473,376+$339,264+ $82,080+$15,941,897+$23,059,008).

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), FEMA is not required to prepare a final regulatory flexibility analysis for this final rule because the agency has not issued a notice of proposed rulemaking prior to this action.

C. National Environmental Policy Act

The National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) (NEPA) implementing regulations governing FEMA activities at § 10.8(d)(2)(ii) categorically exclude the preparation, revision and adoption of regulations from the preparation of an environmental assessment or environmental impact statement, where the rule relates to actions that qualify for categorical exclusions. Mitigation plans to be developed under regulations revised or adopted by this rulemaking

include hazard mitigation measures categorically excluded under § 10.8(d)(2)(iii).

D. Executive Order 12898, Environmental Justice

Under Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, published February 16, 1994), FEMA incorporates environmental justice into its policies and programs. The Executive Order requires each Federal agency to conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that those programs, policies, and activities do not have the effect of excluding persons from participation in programs, denying persons the benefits of programs, or subjecting persons to discrimination because of race, color, or national origin.

FEMA believes that no action under the rule will have a disproportionately high or adverse effect on human health or the environment. This rulemaking implements sections 322 and 323 of the Stafford Act. Section 322 focuses specifically on mitigation planning to identify the natural hazards, risks, and vulnerabilities of areas in States, localities, and tribal areas; development of local mitigation plans; technical assistance to local and tribal governments for mitigation planning; and identifying and prioritizing mitigation actions that the State will support as resources become available. Section 323 requires compliance with applicable codes and standards in repair and construction, and use of safe land use and construction standards. This rulemaking is intended to result in the creation of hazard mitigation plans that will assist communities in planning for hazards, so as to protect human lives and the environment. The Hazard Mitigation Grant Program is available to all States, tribes and local communities regardless of race, color, or national origin. Accordingly, the requirements of Executive Order 12898 do not apply to this rule.

E. Congressional Review of Agency Rulemaking

FEMA has sent this final rule to the Congress and to the Government Accountability Office under the Congressional Review of Agency Rulemaking Act, (''Congressional Review Act''), Public Law 104–121. This rule is not a ''major rule'' within the meaning of the Congressional Review Act. The rule will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have ''significant adverse effects'' on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises.

F. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year.

This final rule is not an unfunded Federal mandate within the meaning of the UMRA. This final rule would not impose a significant cost or uniquely affect small governments. The final does not have an effect on the private sector of $100 million or more in any 1 year. Any enforceable duties that FEMA imposes are a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

G. Executive Order 13132, Federalism

Executive Order 13132, entitled ''Federalism,'' (64 FR 43255, published August 10, 1999), sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications; that is, regulations that have substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action.

FEMA has determined that this rule involves no policies that have federalism implications under Executive Order 13132. However, FEMA consulted with State, local and tribal officials in the promulgation of this rulemaking. Furthermore, in order to assist in the development of this rule, FEMA hosted a meeting to allow interested parties an opportunity to provide their perspectives on the legislation and options for implementation of the Stafford Act requirements. Stakeholders who attended the meeting included representatives from the National Emergency Management Association, the Association of State Floodplain Managers, the National Governors' Association, the International Association of Emergency Managers, the National Association of Development Organizations, the American Public Works Association, the National League of Cities, the National Association of Counties, the National Conference of State Legislatures, the International City/County Management Association, and the Bureau of Indian Affairs. FEMA received valuable input from all parties at the meeting which was taken into account in the development of the initial interim rule. In addition, FEMA received comments on the interim rules from 14 State emergency management agencies, 3 organizations, 2 local governments; and 1 independent group.

H. Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), 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 control number. OMB has approved a collection of information entitled ''State/Local/Tribal Hazard Mitigation Plans—Section 322 of the Disaster Mitigation Act of 2000'' (OMB No. 1660–0062) for the use of information gathered pursuant to this rulemaking. The OMB collection number for this collection is 1660–0062. An emergency extension was filed with OMB on June 18, 2007, and approved on June 25, 2007. The collection is currently set to expire on October 31, 2007. Before the collection expires, FEMA will submit a request for revision to this collection and begin the OMB clearance process for long-term approval by publishing a 60 day request for comments on the revision.

I. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

FEMA has reviewed this rule under Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, published November 9, 2000). FEMA finds that, while it does have ''tribal implications'' as defined in Executive Order 13175, 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.

Despite this determination, FEMA has, and continues to, consult with Indian tribal governments with respect to hazard mitigation. Before FEMA developed the interim rule, the agency met with representatives from State and local governments and the Bureau of Indian Affairs to discuss the new planning requirements of section 322 of the Stafford Act. The same opportunity for comment was offered to all parties. FEMA received valuable input from all attendees, which helped FEMA to develop the interim rule. Also, since FEMA published the interim rule, it has coordinated more directly with Indian tribal governments, and with organizations that represent them. For example, in conjunction with the National Congress of American Indians, FEMA hosted a Tribal Mitigation Conference in October 2002 at the Ak-Chin Indian Community, Arizona. This conference provided FEMA with an opportunity to better understand its responsibilities related to Indian tribal governments and to build a working relationship with many of the Indian tribal representatives. A follow-up conference was held at the Salish Kootenai Community, Montana in August 2003. As a direct result of these conferences, FEMA developed an EMI resident course titled ''Mitigation for Tribal Officials.'' This course provides a direct opportunity for coordination and information sharing between Indian tribal representatives and FEMA, resulting in refinements to FEMA's Indian tribal policy and guidance.

Finally, FEMA believes that planning is critical to successful mitigation at all levels of government. The agency has been working to technically assist all federally-recognized Indian tribal governments regarding the availability of grant funding, training opportunities, as well as program requirements.

List of Subjects

44 CFR Part 201

Administration practice and procedure, Disaster assistance, Grant programs, Reporting and recordkeeping requirements.

44 CFR Part 204

Administration practice and procedure, Fire prevention, Grant programs, Reporting and recordkeeping requirements.

44 CFR Part 206

Administrative practice and procedure, Coastal zone, Community facilities, Disaster assistance, Fire prevention, Grant programs—housing and community development, Housing, Insurance, Intergovernmental relations, Loan programs—housing and community development, Natural resources, Penalties, Reporting and recordkeeping requirements.

■ Accordingly, for the reasons stated in the preamble, the interim rules amending 44 CFR parts 201, 204, and 206 that were published at 67 FR 8844 on February 26, 2002, 67 FR 61512 on October 1, 2002, 68 FR 61368 on October 28, 2003, 69 FR 55094 on September 13, 2004, and the correcting amendment published at 68 FR 63738 on November 10, 2003, are adopted as final with the following changes:

PART 201—MITIGATION PLANNING

■ 1. The authority citation for part 201 is revised to read as follows:

Authority: 42 U.S.C. 5121–5206; 6 U.S.C. 101; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239; 3 CFR, 1979 Comp., p. 412; E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

■ 2. Revise § 201.4 (c)(2)(ii) to read as follows:

§ 201.4 Standard State Mitigation Plans.

* * * * *

(c) * * *

(2) * * *

(ii) An overview and analysis of the State's vulnerability to the hazards described in this paragraph (c)(2), based on estimates provided in local risk assessments as well as the State risk assessment. The State shall describe vulnerability in terms of the jurisdictions most threatened by the identified hazards, and most vulnerable to damage and loss associated with hazard events. State owned or operated critical facilities located in the identified hazard areas shall also be addressed;

* * * * *

Dated: October 24, 2007.

Harvey E. Johnson, Jr.,

Deputy Administrator/Chief Operating Officer, Federal Emergency Management Agency.

[FR Doc. E7–21264 Filed 10–30–07; 8:45 am]

BILLING CODE 9110–41–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

RIN 0648–XD44

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

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

ACTION: Temporary rule; inseason retention limit adjustment.

SUMMARY: NMFS has determined that the Atlantic tunas General category daily Atlantic bluefin tuna (BFT) retention limit should be adjusted for the November and December time periods of the 2007 fishing year and the January period of the 2008 fishing year. NMFS increases the daily BFT retention limits, including on previously scheduled Restricted Fishing Days (RFDs), to provide enhanced commercial fishing opportunities to harvest the established General category quota.

DATES: The effective dates for the adjusted BFT daily retention limits are November 1, 2007, through January 31, 2008.

FOR FURTHER INFORMATION CONTACT: Brad McHale or Sarah McLaughlin, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, per the allocations established in the Consolidated Highly Migratory Species Fishery Management Plan (Consolidated HMS FMP). The latest (2006) ICCAT recommendation for western Atlantic BFT included a U.S. quota of 1,190.12 mt, effective beginning in 2007, through 2008, and thereafter until changed (i.e., via a new ICCAT recommendation).

The 2007 fishing year began on June 1, 2007, and ends December 31, 2007. NMFS published final specifications on June 18, 2007 (72 FR 33401) and

increased the default General category retention limit of one large medium or giant BFT (measuring 73 inches (185 cm) curved fork length (CFL) or greater) per vessel per day/trip to three large medium or giant BFT, measuring 73 inches CFL or greater, per vessel per day/trip through August 31, 2007. On August 31, 2007 (72 FR 50257), NMFS published a notice to increase the General category retention limit for September 1–October 31, 2007, to three large medium or giant BFT. NMFS took these actions to enhance commercial BFT fishing opportunities to those vessels permitted in the Atlantic tunas General category and the Highly Migratory Species (HMS) Charter/Headboat category, while fishing commercially. In addition, NMFS stated that it would consider adjustment of retention limits for future time periods, if warranted.

Daily Retention Limits

Pursuant to this action, the daily BFT retention limits for the Atlantic tunas General and HMS Charter/Headboat categories are as follows:

Adjustment of General Category Daily Retention Limits

Under 50 CFR 635.23(a)(4), NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range of zero to a maximum of three per vessel to provide for maximum utilization of the General category quota for BFT. Such adjustments to the commercial retention limit are based on NMFS' consideration of the criteria provided under § 635.27(a)(8), which include: the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock; the catches of the particular category quota to date and the likelihood of closure of that segment of the fishery if no adjustment is made; the projected ability of the vessels fishing under the 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 gear categories of the fishery might be exceeded; effects of the adjustment on BFT rebuilding and overfishing; effects of the adjustment on accomplishing the objectives of the fishery management plan; variations in seasonal distribution, abundance, or migration patterns of BFT; effects of catch rates in one area precluding vessels in another area from having a reasonable opportunity to harvest a portion of the category's quota; and a review of dealer reports, daily landing trends, and the availability of the BFT on the fishing grounds.

As of October 22, 2007, the coastwide General category has landed 74.8 metric tons (mt) out of a possible 643.6 mt, and catch rates remain less that 1.0 mt per day even though the General category retention limit was increased to three BFT per vessel per trip, measuring 73 inches (185 cm) CFL or greater for June through October 2007. Starting on November 1, 2007, the General category daily retention limit, located at 50 C.F.R. 635.23(a)(2), is scheduled to revert back to the default retention limit of one large medium or giant BFT (measuring 73 inches (185 cm) CFL) or greater per vessel per day/trip. This scheduled retention limit applies to General category permitted vessels and HMS Charter/Headboat category permitted vessels (when fishing commercially for BFT).

Each of the General category time periods (January, June-August, September, October-November, and December) is allocated a portion of the coastwide General category quota, thereby ensuring fishing opportunities are provided in years where high catch rates are experienced. In combination with the subquota rollover from previous 2007 fishing year time-periods, scheduled RFDs, current catch rates, and the daily retention limit reverting to one large medium or giant BFT per vessel per day on November 1, 2007, NMFS anticipates the full 2007 fishing year General category quota and January 2008 subquota will not be harvested. Adding an excessive amount of unused quota from one time-period subquota to the subsequent time-period subquota is undesirable because it effectively changes the time-period subquota allocation percentages established in the Consolidated HMS FMP and may contribute to excessive carry-overs to subsequent fishing years.

NMFS has considered the set of criteria cited above and their applicability to the commercial BFT retention limit for the remainder of the 2007 fishing year and the January portion of the 2008 fishing year. Based on these considerations, NMFS has determined that the General category retention should be adjusted to allow for retention of the established General category quota. Therefore, NMFS increases the General category retention limit from the default limits effective November 1, 2007, through January 31, 2008. This adjustment increases the General category daily retention limit to three large medium or giant BFT, measuring 73 inches (185 cm) CFL or greater, per vessel per day/trip. This General category retention limit is effective in all areas, except for the Gulf of Mexico, and applies to those vessel permitted in the General category as well as to those HMS Charter/Headboat permitted vessels fishing commercially for BFT.

Restricted Fishing Days

The 2007 fishing year BFT specifications and effort controls included the following RFDs: all Saturdays and Sundays from November 17, 2007, through December 31, 2007, plus November 22 and December 25, 2007. These RFDs were designed to provide for an extended late season, south Atlantic BFT fishery for the commercial handgear fishermen in the General category. For the reasons referred to above, NMFS has determined that the scheduled RFDs are no longer required to meet their original purpose, but may in fact exacerbate low catch rates, and waives all previously scheduled RFDs for the 2007 fishing year. Therefore, NMFS has determined that an increase in the General category daily BFT retention limit effective from November 1, 2007, through January 31, 2008, inclusive of days that were previously scheduled as RFDs, is warranted. Thus, NMFS is extending the General category daily retention limit of three large medium or giant BFT per vessel per day/trip through January 31, 2008, including all Saturdays and Sundays in November and December 2007 as well as November 22 and December 25, 2007.

This adjustment is intended to provide a reasonable opportunity to harvest the U.S. landings quota of BFT while maintaining an equitable distribution of fishing opportunities, to help achieve optimum yield in the General category BFT fishery, to collect a broad range of data for stock monitoring purposes, and to be consistent with the objectives of the Consolidated HMS FMP.

Monitoring and Reporting

NMFS selected the daily retention limit and the duration after examining an array of data as it pertains to the determination criteria. These data included, but were not limited to, current and previous catch and effort rates, quota availability, previous public comments on inseason management measures, stock status, etc. NMFS will continue to monitor the BFT fishery closely through the mandatory dealer landing reports, which NMFS requires to be submitted within 24 hours of a dealer receiving BFT. Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional retention limit adjustments

are necessary to ensure available quota is not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas.

Closures or subsequent adjustments to the daily retention limits, if any, will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (888) 872–8862 or (978) 281–9260, or access the internet at www.hmspermits.gov, for updates on quota monitoring and retention limit adjustments.

Classification

The Assistant Administrator for NMFS (AA), finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

NMFS continues to receive information refining its understanding of the commercial sector's specific needs regarding retention limits through the latter portions of the 2007 season. NMFS assessments and analyses show catch rates to date have been low and that there is sufficient quota for an increase to the General category retention limit during the months of November 2007 through January 2008.

The regulations implementing the Consolidated HMS FMP provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Affording prior notice and opportunity for public comment to implement these retention limits is impracticable as it would preclude NMFS from acting promptly to allow harvest of BFT that are available on the fishing grounds. Analysis of available data shows that the General category BFT retention limits may be increased with minimal risks of exceeding the ICCAT-allocated quota.

Delays in increasing these retention limits would adversely affect those General and Charter/Headboat category vessels that would otherwise have an opportunity to harvest more than the default retention limit of one BFT per day and may exacerbate the problem of low catch rates and quota rollovers. Limited opportunities to harvest the respective quotas may have negative social and economic impacts to U.S. fishermen that either depend upon catching the available quota within the time periods designated in the Consolidated HMS FMP. Adjustment to the retention limit needs to be effective November 1, 2007, to minimize any unnecessary disruption in fishing patterns and for the impacted sectors to benefit from the adjustments so as to not preclude fishing opportunities from fishermen who only have access to the fishery during this time period.

Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, and because this action relieves a restriction (i.e., current default retention limit is one fish per vessel/trip but this action increases that limit and allows retention of more fish), there is also good cause under 5 U.S.C. 553(d) to waive the 30–day delay in effectiveness.

This action is being taken under 50 CFR 635.23(a)(4) and (b)(3) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: October 25, 2007.

Emily H. Menashes,

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

[FR Doc. E7–21442 Filed 10–30–07; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 72, No. 210

Wednesday, October 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.

FARM CREDIT ADMINISTRATION

12 CFR Part 615

RIN 3052–AC25

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Capital Adequacy—Basel Accord

AGENCY: Farm Credit Administration.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: The Farm Credit Administration (FCA or we) is considering possible modifications to our risk-based capital rules for Farm Credit System institutions (FCS or System) that are similar to the standardized approach delineated in the New Basel Capital Accord. We are seeking comments to facilitate the development of a proposed rule that would enhance our regulatory capital framework and more closely align minimum capital requirements with risks taken by System institutions. We are also withdrawing our previously published ANPRM.

DATES: You may send comments on or before March 31, 2008.

ADDRESSES: We offer several methods for the public to submit comments. For accuracy and efficiency reasons, commenters are encouraged to submit comments by e-mail or through the Agency's Web site or the Federal eRulemaking Portal. Regardless of the method you use, please do not submit your comment multiple times via different methods. You may submit comments by any of the following methods:

- *E-mail:* Send us an e-mail at *reg-comm@fca.gov*.
- *Agency Web site: http://www.fca.gov.* Select ''Legal Info,'' then ''Pending Regulations and Notices.''
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Gary K. Van Meter, Deputy Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.
- *Fax:* (703) 883–4477. Posting and processing of faxes may be delayed, as faxes are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act. Please consider another means to comment, if possible.

You may review copies of comments we receive at our office in McLean, Virginia, or on our Web site at *http://www.fca.gov*. Once you are in the Web site, select ''Legal Info,'' and then select ''Public Comments.'' We will show your comments as submitted, but for technical reasons we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove e-mail addresses to help reduce Internet spam.

FOR FURTHER INFORMATION CONTACT: Laurie Rea, Associate Director, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4232, TTY (703) 883–4434, or Wade Wynn, Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4262, TTY (703) 883–4434, or Rebecca S. Orlich, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION:

I. Objectives

The objective of this ANPRM is to gather information to facilitate the development of a comprehensive proposal that would:

1. Promote safe and sound banking practices and a prudent level of regulatory capital for System institutions; [1]
2. Improve the risk sensitivity of our regulatory capital requirements while avoiding undue regulatory burden;
3. To the extent appropriate, minimize differences in regulatory capital requirements between System institutions and federally regulated banking organizations; [2] and
4. Foster economic growth in agriculture and rural America through the effective allocation of System capital.

In addition, we are withdrawing our previous ANPRM on capital, published in the **Federal Register** on June 21, 2007 (72 FR 34191), as described more fully below.

II. Background

The FCA's risk-based capital requirements for System institutions are contained in subparts H and K of part 615 of our regulations.[3] Our risk-based capital framework is based, in part, on the ''International Convergence of Capital Measurement and Capital Standards'' (Basel I) as published by the Basel Committee on Banking Supervision (Basel Committee) [4] and is broadly consistent with the capital requirements of the other Federal financial regulatory agencies.[5] We first adopted a risk-based capital framework for the System as part of our 1988 regulatory capital revisions [6] required by the Agricultural Credit Act of 1987 [7] and made subsequent revisions in 1997,[8] 1998 [9] and 2005.[10] Under the current capital framework, each on- and off-balance sheet credit exposure is assigned to one of five broad risk-weighting categories to determine the

[1] The System was created by Congress in 1916 and is the oldest GSE in the United States. System institutions provide credit and financially related services to farmers, ranchers, producers or harvesters of aquatic products, and farmer-owned cooperatives. They also make credit available for agricultural processing and marketing activities, rural housing, certain farm-related businesses, agricultural and aquatic cooperatives, rural utilities, and foreign and domestic entities in connection with international agricultural trade.

[2] Banking organizations include commercial banks, savings associations, and their respective bank holding companies.

[3] Our regulations can be accessed at *http://www.fca.gov/index.html*.

[4] The Basel Committee on Banking Supervision was established in 1974 by central banks with bank supervisory authorities in major industrialized countries. The Basel Committee formulates standards and guidelines related to banking and recommends them for adoption by member countries and others. All Basel Committee documents are available at *http://www.bis.org*.

[5] We refer collectively to the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision as the ''other Federal financial regulatory agencies.''

[6] *See* 53 FR 39229 (October 6, 1988).

[7] Pub. L. 100–233 (January 6, 1988), section 301. The 1987 Act amended many provisions of the Farm Credit Act of 1971, as amended, which is codified at 12 U.S.C. 2001 *et seq.*

[8] *See* 62 FR 4429 (January 30, 1997).

[9] *See* 63 FR 39219 (July 22, 1998).

[10] *See* 70 FR 35336 (June 17, 2005).

risk-adjusted asset base, which is the denominator for computing the permanent capital, total surplus, and core surplus ratios.

For a number of years, the Basel Committee has worked to develop a more risk sensitive regulatory capital framework that incorporates recent innovations in the financial services industry. In June 2004, it published the ''International Convergence of Capital Measurement and Capital Standards: A Revised Framework'' (Basel II) to promote improved risk measurement and management processes and more closely align capital requirements with risk.[11] Basel II has three pillars: (1) Minimum capital requirements for credit risk, operational risk, and market risk, (2) supervision of capital adequacy, and (3) market discipline through enhanced public disclosure. Banking organizations have various options for calculating the minimum capital requirements for credit and operational risk. For credit risk, the options are the standardized approach, the foundation internal ratings-based approach, and the advanced internal ratings-based approach (A–IRB). For operational risk, the options are the basic indicator approach, the standardized approach, and the advanced measurement approach (AMA).

In September 2006, the other Federal financial regulatory agencies issued an interagency notice of proposed rulemaking for implementing the advanced approaches of Basel II in the United States (the advanced capital framework).[12] This advanced capital framework would require core banks [13] and permit opt-in banks [14] to use the A–IRB [15] to calculate the regulatory capital requirement for credit risk and the AMA [16] to calculate the regulatory capital requirement for operational risk.[17]

Given the small number of core banks and the complexity and cost associated with voluntarily adopting the advanced approaches, only a small number of U.S. banking organizations are expected to implement the advanced capital framework. As a result, a bifurcated regulatory capital framework will be created in the United States, which could result in different regulatory capital charges for similar products offered by those that apply the advanced capital framework and those that do not. Financial regulators, banking organizations, trade associations and other interested parties have raised concerns that the bifurcated structure could create a significant competitive disadvantage for those that do not apply the advanced capital framework.

In December 2006, the other Federal financial regulatory agencies addressed these concerns by issuing an interagency notice of proposed rulemaking (Basel IA) to improve the risk sensitivity of the existing Basel I-based capital framework.[18] Subsequently, the FCA issued an ANPRM,[19] published in June 2007, addressing issues similar to those addressed in Basel IA. Basel IA was intended to help minimize the potential differences in the regulatory minimum capital requirements of those banks applying the advanced capital framework and those banks that would not. The other Federal financial regulatory agencies received a significant number of comments opposing their Basel IA proposal. Many commenters argued that the benefits of complying with Basel IA did not outweigh the burdens, and many questioned why the U.S. banking agencies were creating a separate rule that had only minor differences from the standardized approach under Basel II. On July 20, 2007, the other Federal financial regulatory agencies announced that they intended to replace the Basel IA proposal with a proposed rule that would provide all non-core banks the option to adopt the standardized approach under Basel II.[20] Their stated intent is to finalize a standardized approach for banks that do not adopt the advanced approaches before the core (and opt-in) banks begin their first transition period year under the advanced approaches of Basel II.

The other Federal financial regulatory agencies plan to replace Basel IA with a proposed rule patterned after the standardized approach under Basel II. Consequently, we are withdrawing our previous ANPRM and replacing it with one that is also consistent with the standardized approach. We intend to develop a proposed rule that is similar to the capital requirements of the other Federal financial regulatory agencies where appropriate but also tailored to fit the System's distinct borrower-owned lending cooperative structure and Government-sponsored enterprise (GSE) mission.

The questions posed in this ANPRM are, for the most part, similar to the questions we asked in our previous ANPRM.[21] We have revised the technical material in most places to conform to the standardized approach of Basel II. For example, we replaced the risk-weight categories that were in the Basel IA proposed rule with the risk-weight categories that are contained in the standardized approach under Basel II. We ask commenters to consider the revised material when answering the following questions. We seek comments from all interested parties to help us develop a comprehensive proposal that would enhance our regulatory capital framework and increase the risk sensitivity of our risk-based capital rules without unduly increasing regulatory burden.

III. Questions

When addressing the following questions, we ask commenters to consider the overarching objectives of Basel II to more closely align capital with the specific risks taken by the financial institution rather than relying on a ''one-size-fits-all'' approach for determining regulatory minimum risk-based capital requirements. Our objective is to develop a more dynamic risk-based capital framework that is more sensitive to the relative risks inherent in System lending and other mission-related activities. We seek comments on specific criteria that might be used to determine appropriate risk weights that meet this objective without

[11] *See http://www.bis.org/publ/bcbsca.htm* for the 2004 Basel II Accord as well as updates in 2005 and 2006.

[12] *See* 71 FR 55830 (September 25, 2006). This document is at *http://www.federalreserve.gov/generalinfo/basel2/USImplementation.htm*.

[13] Core banks are banking organizations that have consolidated total assets of $250 billion or more or have consolidated on-balance sheet foreign exposures of $10 billion or more.

[14] Opt-in banks are banking organizations that do not meet the definition of a core bank but have the risk management and measurement capabilities to voluntarily implement the advanced approaches of Basel II with supervisory approval.

[15] A banking organization computes internal estimates of certain key risk parameters for each credit exposure or pool of exposures and feeds the results into regulatory formulas to determine the risk-based capital requirement for credit risk.

[16] Internal operational risk management systems and processes are used to compute risk-based capital requirements for operational risk.

[17] The other Federal financial regulatory agencies also seek comments on whether core and opt-in banks should be permitted to use other credit and operational risk approaches.

[18] 71 FR 77446 (December 26, 2006). This document is at *http://www.federalreserve.gov/generalinfo/basel2/USImplementation.htm*.

[19] 72 FR 34191 (June 21, 2007).

[20] Joint Press Release, ''Banking Agencies Reach Agreement On Basel II Implementation,'' (July 20, 2007). This document is at *http://www.occ.gov/ftp/release/2007–77.htm*.

[21] Questions 1, 3, 4, 5, 9 and 10 in this ANPRM are identical to those numbered questions posed in our previous ANPRM. Questions 2, 6 and 11 are slightly different. Question 7 in this ANPRM replaces Questions 7 and 8 in our previous ANPRM. Questions 8, 12, and 16 are new to this ANPRM. Questions 13 through 15 are identical to Questions 12 through 14 in our previous ANPRM. Question 17 is identical to Question 15 in our previous ANPRM.

creating undue burden. Specifically, we ask that you support your comments with data, to the extent possible, in response to our questions.[22]

A. Increase the Number of Risk-Weight Categories

Our existing risk-based capital rules assign exposures to one of five risk-weight categories: 0, 20, 50, 100, and 200 percent.[23] The standardized approach of Basel II adds risk-weight categories of 35, 75, and 150 percent and replaces the 200-percent risk-weight category with a 350-percent risk-weight category.[24] The 35-percent risk-weight category would apply to certain residential mortgages. The 75-percent risk-weight category would apply to certain retail claims (e.g., small business loans). The 150-percent and 350-percent risk-weight categories would apply to certain higher risk externally rated exposures (e.g., those below investment grade).

Question 1: We seek comment on what additional risk-weight categories, if any, we should consider for assigning risk weights to System institutions' on- and off-balance sheet exposures. If additional risk-weight categories are added, what assets should be included in each new risk-weight category?

B. Use of External Credit Ratings To Assign Risk-Weight Exposures

1. Direct Exposures

In recent years, the FCA has permitted System institutions to use external ratings to assign risk weights to certain credit exposures linked to nationally recognized statistical rating organizations (NRSROs) ratings.[25] For example, in March 2003, we adopted an interim final rule that permitted System institutions to use NRSRO ratings to place highly rated investments in non-agency asset-backed securities (ABS) and mortgage-backed securities (MBS) in the 20-percent risk-weight category.[26] In April 2004, we expanded the use of NRSRO ratings to assign risk weights to loans to other financing institutions.[27] In June 2005, we adopted a ratings-based approach to assign risk weights to recourse obligations, direct credit substitutes (DCS), residual interests (other than credit-enhancing interest-only strips), and other ABS and MBS investments.[28] Furthermore, we recently permitted the use of NRSRO ratings to assign risk weights to certain electric cooperative credit exposures.[29]

The standardized approach of Basel II expands the use of NRSRO ratings to determine the risk-based capital charge for long-term exposures to sovereign entities, non-central government public sector entities (PSEs), banks,[30] corporate entities, and securitizations as displayed in Table 1 set forth below.[31]

TABLE 1.—THE STANDARDIZED APPROACH RISK WEIGHTS BASED ON EXTERNAL RATINGS FOR LONG-TERM EXPOSURES

Credit assessment	Sovereign risk weight (in percent)	PSE and bank * risk weights (in percent)		Corporate risk weight (in percent)	Securitization ** risk weight (in percent)
		Option 1	Option 2		
AAA to AA−	0	20	20	20	20.
A+ to A−	20	50	50	50	50.
BBB+ to BBB−	50	100	50	100	100.
BB+ to BB−	100	100	100	100	350.
B+ to B−	100	100	100	150	Deduction.***
Below B−	150	150	150	150	Deduction.***
Unrated	100	100	50	100	Deduction.***

* The Standardized Approach provides two options for PSEs and bank exposures: (1) Option 1 assigns a risk weight one category below that of sovereigns; (2) Option 2 assigns a risk weight based on the individual bank rating. Option 2 also provides risk weights for short-term claims as follows: (1) AAA to BBB− and unrated = 20 percent; (2) BB+ to B− = 50 percent; and (3) Below B− = 150 percent.

** Short-term rating categories are as follows: (1) A–1/P–1 = 20 percent; (2) A–2/P–2 = 50 percent; (3) A–3/P–3 = 100 percent; and (4) All other ratings or unrated = Deduction.

*** Banks must deduct the entire amount from capital. However, if banks originate a securitization and the most senior exposure is unrated, the bank may use the "look through" treatment, which is the average risk weight of the underlying exposures subject to supervisory review.

System institutions provide financing to agriculture and rural America through a variety of lending[32] and investment[33] products. They also hold highly rated liquid investments to manage liquidity, short-term surplus funds, and interest rate risk. Our existing risk-based capital rules assign most agricultural and rural business[34] loans and mission-related investment assets to the 100-percent risk-weight category unless the risk exposure is mitigated by an acceptable guarantee or collateral. The FCA is considering the expanded use of NRSRO ratings to assign risk weights to other externally rated credit exposures in the System, such as corporate debt securities and loans.

Question 2: We seek comments on all aspects of the appropriateness of using NRSRO ratings to assign risk weights to

[22] Please note that any data you submit will be made available to the public in our rulemaking file.

[23] FCA's risk-weight categories are set forth in 12 CFR 615.5211.

[24] Basel IA proposed adding risk-weight categories of 35, 75, and 150 percent.

[25] A NRSRO is a credit rating organization that is recognized by and registered with the Securities and Exchange Commission (SEC) as a nationally recognized statistical rating organization. *See* 12 CFR 615.5201. *See* also Pub. L. 109–291.

[26] *See* 68 FR 15045 (March 28, 2003).

[27] Other financing institutions are non-System financial institutions that borrow from System banks. *See* 69 FR 29852 (May 26, 2004).

[28] These changes are consistent with those of the other Federal financial regulatory agencies. *See* 70 FR 35336 (June 17, 2005).

[29] *See* "Revised Regulatory Capital Treatment for Certain Electric Cooperatives Assets," FCA Bookletter BL–053 (February 12, 2007).

[30] Banks include multilateral development banks and securities firms.

[31] Basel IA proposed the categories sovereign entities, non-sovereign entities, and securitizations with different risk-weight categories.

[32] The Farm Credit Banks provide wholesale funding to their affiliated associations who, in turn, make retail loans to eligible borrowers. CoBank, ACB, provides both wholesale funding to its affiliated associations and retail loans to cooperatives and other eligible borrowers.

[33] System banks and associations are permitted to make mission-related investments to agriculture and rural America. *See* "Investments in Rural America-Pilot Investment Programs," FCA Informational Memorandum (January 11, 2005).

[34] Agricultural businesses include farmer-owned cooperatives, food and fiber processors and marketers, manufacturers and distributors of agricultural inputs and services, and other agricultural-related businesses. Rural businesses include electric utilities and other energy-related businesses, communication companies, water and waste disposal businesses, ethanol plants, and other rural-related businesses.

credit exposures. If we expand the use of external ratings, how should we align the risk-weight categories with NRSRO ratings to determine the appropriate capital charge for externally rated credit exposures? Should any externally rated positions be excluded from this new ratings-based approach? We ask commenters to consider the substantial reliance on NRSRO ratings as a means of evaluating the quality of debt investments in view of recent events in the subprime mortgage market.

2. Recognized Financial Collateral

Our current risk-based capital rules assign lower risk weights to exposures collateralized by: (1) Cash held by a System institution or its funding bank; (2) securities issued or guaranteed by the U.S. Government, its agencies or Government-sponsored agencies; (3) securities issued or guaranteed by central governments in other OECD[35] countries; (4) securities issued by certain multilateral lending or regional development institutions; or (5) securities issued by qualifying securities firms.

The standardized approach of Basel II has two methods for recognizing a wider variety of collateral types for risk-weighting purposes.[36] Under the simple approach, the collateralized portion of the exposure would be assigned a risk weight (as listed in Table 1) according to the external rating of the collateral. The remainder of the exposure would be assigned a risk weight appropriate to the counterparty. Collateral would be subject to a 20-percent floor unless the collateral is cash, certain government securities or repurchase agreements, and it would be marked-to-market and revalued every 6 months. Securities issued by sovereigns or PSEs must be rated at least BB-or its equivalent by a NRSRO. Securities issued by other entities must be rated at least BBB-or its equivalent by an NRSRO. Short-term debt instruments used as collateral must be rated at least A–3/P–3 or its equivalent by an NRSRO.

Under the comprehensive approach, the banking organization adjusts the value of the exposure by the discounted value of the collateral. Discount values, known as supervisory haircuts, are displayed in Table 2 set forth below. For example, sovereign debt rated A+ with a 5-year maturity used as collateral is discounted by 3 percent, and corporate debt rated A+ with a 5-year maturity is discounted at 6 percent.

TABLE 2.—STANDARD SUPERVISORY HAIRCUTS IN THE COMPREHENSIVE APPROACH FOR CREDIT MITIGATION

Issue rating for debt securities	Residual maturity	Sovereigns and PSEs * (in percent)	Other issuers ** (in percent)
AAA to AA− or A−	≤ 1 year	0.5	1
	> 1 year, ≤ 5 years	2	4
	> 5 years	4	8
A+ to BBB− or A–2/A–3/P–3	≤ 1 year	1	2
	> 1 year, ≤ 5 years	3	6
	> 5 years	6	12
BB+ to BB−	All	15	

* Includes PSEs treated as sovereigns.
** Includes PSEs not treated as sovereigns.

Question 3: We seek comment on whether recognizing additional types of eligible collateral would improve the risk sensitivity of our risk-based capital rules without being overly burdensome. We also seek comment on what additional types of collateral, if any, we should consider and what effect the collateral should have on the risk weighting of System exposures.

3. Eligible Guarantors

Our existing capital rules permit the use of third party guarantees to lower the risk weight of certain exposures. Guarantors include: (1) The U.S. Government, its agencies or Government-sponsored agencies; (2) U.S. state and local governments; (3) central governments and banks in OECD countries; (4) central governments in non-OECD countries (local currency exposures only); (5) banks in non-OECD countries (short-term claims only); (6) certain multilateral lending and regional development institutions; and (7) qualifying securities firms.

The standardized approach of Basel II expands the range of eligible guarantors to include sovereign entities, PSEs, banks and securities firms that have a lower risk weight than the counterparty.[37] All other guarantors must be rated A− (or its equivalent) or better by a NRSRO. The guarantee must: (1) Represent a direct claim on the protection provider, (2) be explicitly referenced to specific exposures or pools of exposures, (3) be irrevocable, and (4) unconditional. The guarantor's risk weight would be substituted for the risk weight assigned to the exposure. Non-guaranteed portions of the exposure would be assigned to the external rating of the exposure.

Question 4: We seek comment on what additional types of third party guarantees, if any, we should recognize and what effect such guarantees should have on the risk weighting of System exposures.

C. Direct Loans to System Associations

The FCA is considering ways to better align our risk-based capital requirements for direct loans with System associations. System banks make direct loans to their affiliated associations who, in turn, make retail loans to eligible borrowers. Our current risk-based capital rules assign a 20-percent risk weight to direct loans at the bank level and another risk weight (depending upon the type of loan) to retail loans at the association level.[38] The 20-percent risk weight is intended to recognize the risks to the banks associated with lending to their

[35] OECD stands for the Organization for Economic Cooperation and Development. The OECD is an international organization of countries that are committed to democratic government and the market economy. An up-to-date listing of member countries is available at *http://www.oecd.org* or *http://www.oecdwash.org.*

[36] Basel IA proposed assigning lower risk weights to exposures collateralized by securities issued by sovereigns or non-sovereigns that were externally rated at least investment grade.

[37] Basel IA proposed to include guarantees from any entity that had long-term senior debt rated at least investment grade (or issuer rating if a sovereign).

[38] Our risk-based capital rules also assign a 20-percent risk weight to similar GSE and OECD depository institution exposures.

affiliated associations. We are exploring methods to improve the risk sensitivity of our risk-based capital rules by assigning different risk weights to direct loan exposures based on the System association's distinct risk profile.

Question 5: We seek comment on what evaluative criteria or methods we should use to assign risk weights to direct loans to System associations. How should the criteria be used to adjust the risk weight as the quality of the direct loan changes over time?

D. Small Agricultural and Rural Business Loans

Our existing risk-based capital rules assign small agricultural and rural business loans to the 100-percent risk-weight category unless the credit risk is mitigated by an acceptable guarantee or acceptable collateral. The standardized approach of Basel II applies a 75-percent risk weight to certain retail claims [39] provided: (1) The exposure is to an individual person or persons or to a small business, (2) the exposure is in the form of a revolving credit, line of credit, personal term loan or lease, or small business facility or commitment, (3) the regulatory supervisor is satisfied that the retail portfolio is sufficiently diversified to warrant such a risk weight, and (4) the total credit exposure to the borrower does not exceed approximately $1.4 million.[40]

Question 6: We seek comment on what approaches we should use to improve the risk sensitivity of our risk-based capital rules for small agricultural and rural business loans. More specifically, what criteria should we use to classify an agricultural or rural business as a small business? What criteria should we use to assign risk-weights of less than 100 percent to these types of loans?

E. Loans Secured by Liens on Real Estate

The FCA is considering ways to use loan-to-value ratios (LTV) and other criteria to determine the risk-based capital charges for farm real estate and qualified residential loans. Our existing capital rules assign farm real estate loans to the 100-percent risk-weight category and qualified residential loans [41] to the 50-percent risk-weight category. The standardized approach of Basel II assigns a 35-percent risk weight to all prudently underwritten residential mortgages. Basel IA had proposed to risk-weight loans secured by first and second liens on residential real estate based on LTV. We continue to believe that LTV is a viable option for determining appropriate risk-weights for farm real estate and qualified residential loans. We are also considering approaches that would combine borrower creditworthiness and other loan characteristics in conjunction with LTV.

Question 7: We seek comment on all aspects of using LTV to determine the appropriate risk-weight for farm real estate, qualified residential loans, or any other asset class. We also welcome comments on other methods that could be used to improve the risk sensitivity of our risk-based capital rules for these types of loans.

F. Loans 90 Days or More Past Due or in Nonaccrual [42]

Our existing risk-based capital rules assign most loans to the 100-percent risk-weight category unless the credit risk is mitigated by an acceptable guarantee or collateral. When exposures reach 90 days or more past due or are in nonaccrual status, there is a higher probability that the financial institution might incur a loss. The standardized approach of Basel II addresses this potentially higher risk of loss by assigning the unsecured portion of a loan that is 90 days or more past due (net of specific provisions) as follows:

- 150-percent risk weight when specific provisions are less than 20 percent of the outstanding amount of the loan;
- 100-percent risk weight when specific provisions are 20 percent or more of the outstanding amount of the loan;
- When specific provisions are 50 percent or more of the outstanding amount of the loan, the supervisor has the discretion to reduce the risk weight to 50 percent.

Question 8: We seek comment on all aspects related to risk-weighting exposures that reach 90 days or more past due or are in nonaccrual status.

G. Short- and Long-Term Commitments

Under § 615.5212, off-balance sheet commitments are generally risk-weighted in two steps: (1) The off-balance sheet commitment is multiplied by a credit conversion factor (CCF) [43] to determine its on-balance sheet credit equivalent; and (2) the on-balance sheet credit equivalent is assigned to the appropriate risk-weight category in § 615.5211 according to the obligor, after considering any applicable collateral and guarantees.[44] The standardized approach of Basel II assigns a 0-percent CCF to unconditionally cancelable commitments,[45] a 20-percent CCF to short-term commitments, and a 50-percent CCF to long-term commitments.[46]

Question 9: We seek comment on what approaches we should use to risk weight short- and long-term commitments that are not unconditionally cancelable.

H. Adjusting Risk Weights on Exposures Over Time

The FCA welcomes comment on additional approaches or criteria that might be used to adjust the risk weight of exposures throughout the life of the asset. Our existing risk-based capital rules assign a static risk weight to assets within a given asset class without providing for risk-weight adjustments as asset quality improves or deteriorates. For example, most loans to System borrowers are risk-weighted at 100 percent throughout the life of the loan without making risk-weight adjustments based on credit classifications or other credit performance factors.

Question 10: We seek comment on what methods we should use to adjust the risk weight of credit exposures as the asset quality or default probability changes over time.

I. Capital Charge for Operational Risk

The FCA welcomes comments on possible approaches for determining a capital charge for operational risk. The broad risk-weighting categories under our existing capital rules are primarily

[39] The other Federal financial regulatory agencies stated in Basel IA that they were exploring options to permit certain small business loans to qualify for a 75-percent risk weight.

[40] We present a comparable threshold in terms of U.S. dollars. The standardized approach of Basel II has a threshold of €1 million.

[41] Qualified residential loans are rural home loans (as defined by 12 CFR 613.3030) and single-family residential loans to bona fide farmers, ranchers, or producers or harvesters of aquatic products that meet the requirements listed in 12 CFR 615.5201.

[42] This section was not in the previous ANPRM.

[43] A CCF is a number by which an off-balance sheet item is multiplied to obtain a credit equivalent before placing the item in a risk-weight category.

[44] Our existing regulations assign a 0-percent CCF to unused commitments with an original maturity of 14 months or less. Unused commitments with an original maturity of greater than 14 months can also receive a 0-percent CCF provided the commitment is unconditionally cancelable and the System institution has the contractual right to make a separate credit decision before each drawing under the lending arrangement. All other unused commitments with an original maturity of greater than 14 months are assigned a 50-percent CCF.

[45] An unconditionally cancelable commitment is one that can be canceled for any reason at any time without prior notice.

[46] Basel IA proposed to retain the 0-percent CCF for all unconditionally cancelable commitments, apply a 10-percent CCF to all other short-term commitments, and retain the 50-percent CCF for all long-term commitments.

designed to protect against credit or counterparty risk. As we move toward a more risk-sensitive capital framework, it may be appropriate to apply an explicit capital charge for operational risk, especially to cover risks associated with off-balance sheet activity.

Basel II defines operational risk as the risk of loss resulting from inadequate or failed internal processes, people, systems, or from external events. This definition includes legal risk but excludes strategic and reputational risk. As previously mentioned, Basel II has three methods for applying a capital charge for operational risk. Under the basic indicator approach, the operational capital charge is equal to 15 percent of the 3-year average of positive annual gross income. Under the standardized approach, the operational capital charge is equal to the sum of a fixed percentage of the 3-year average of the gross income of eight business lines.[47] Under the AMA, the operational capital charge is derived from a bank's internal operational risk management systems and processes.

Question 11: We seek comment on what approach we should consider, if any, in determining a risk-based capital charge for operational risk.

J. Disclosure [48]

The FCA recognizes that market discipline contributes to a safe and sound banking environment and enhances risk management practices. Pillar III of Basel II is designed to complement the minimum capital requirements and supervisory review process by encouraging market discipline through meaningful public disclosure. The disclosure requirements are intended to allow market participants to assess key information about an institution's risk profile and associated level of capital to better evaluate risk management performance, earnings potential and financial strength.

Pillar III of Basel II presents the following general disclosure requirements: (1) Banks should have a formal disclosure policy approved by the board of directors that addresses the institution's approach for determining the disclosures it should make; [49] (2) banks should implement a process for assessing the appropriateness of their disclosures, including validation and frequency of them; (3) banks should decide which disclosures are relevant based on the materiality concept; [50] and (4) the disclosures should be made on a semi-annual basis, subject to certain exceptions.[51]

The other Federal financial regulatory agencies have proposed the following additional requirements in the advanced capital framework: (1) The disclosures would follow U.S. generally accepted accounting principles, SEC mandates, and existing regulatory reporting requirements; (2) the banks would be required to disclose quantitative information on a quarterly basis following SEC deadlines; (3) the disclosures would be made publicly available (for example, on a Web site) for each of the last 3 years (that is, 12 quarters); [52] (4) disclosure of key financial ratios must be provided in the footnotes to the year-end audited financial statements; [53] (5) the chief financial officer must certify that the disclosures are appropriate; and (6) the board of directors and senior management are responsible for establishing the internal control structure over financial reporting.

Question 12: We seek comment on all aspects of the Basel II public disclosure requirements. Specifically, how would the System apply the public disclosure requirements of Pillar III given its unique cooperative structure?

K. Capital Leverage Ratio

We are considering whether we should supplement our existing risk-based capital rules with a minimum capital leverage ratio requirement for all FCS institutions to further promote the safety and soundness of the System. Our existing capital regulations require System banks to maintain a minimum net collateral ratio (NCR) [54] of 103 percent [55] but do not impose a capital leverage ratio on System associations. The NCR provides a level of protection for operating and other forms of risk at System banks, but it does not differentiate higher quality from lower quality capital. The other Federal financial regulatory agencies currently supplement their risk-based capital rules with a leverage ratio of Tier 1 capital to total assets (Tier 1 leverage ratio).[56] The Tier 1 leverage ratio consists of only the most reliable and permanent forms of capital such as common stock, non-cumulative perpetual preferred stock, and retained earnings.

Question 13: We seek comment on whether our capital rules should include a minimum capital leverage ratio requirement for all System institutions. We also seek comment on changes, if any, that should be made to the existing regulatory minimum NCR requirement applicable to System banks that would make it more comparable to the Tier 1 ratio used by the other Federal financial regulatory agencies.

L. Regulatory Capital Directives [57]

We are considering whether we should modify our capital rules to specify potential early intervention criteria for the issuance of capital directives. Currently, FCA has the discretion to issue a capital directive [58] when an institution's capital is insufficient. The FCA, however, has not defined capital or other financial early intervention thresholds to require an institution to take corrective action as described in § 615.5355. Early intervention approaches have been used in other contexts, including the System's Market Access Agreement and the statutory requirements applicable to other regulated financial institutions.[59] An early intervention capital directive framework could provide a clearer

[47] Each business line is multiplied by a fixed percentage and then summed together to determine the annual gross income. The eight lines of business are corporate finance (18 percent), trading and sales (18 percent), retail banking (12 percent), commercial banking (15 percent), payment and settlement (18 percent), agency services (15 percent), asset management (12 percent), and retail brokerage (12 percent).

[48] This section was not in the previous ANPRM.

[49] Disclosure is a qualifying criterion under Pillar I to obtain lower risk weightings and/or to apply specific methodologies.

[50] Pillar III of Basel II provides minimum disclosure requirements on capital structure and adequacy, and risk exposure and assessment on credit risk, market risk, operational risk, equities, and interest rate risk in the banking book.

[51] Disclosure of key capital ratios should be made on a quarterly basis. Qualitative disclosures providing a general summary of a bank's risk management objective and policies, reporting system and definitions may be published on an annual basis.

[52] U.S. Basel II banks are encouraged to provide this information in one place on the entity's public Web site.

[53] These disclosures would be tested by external auditors as part of the financial statement audit.

[54] The net collateral ratio is a bank's net collateral as defined in 12 CFR 615.5301(c) divided by the bank's adjusted total liabilities.

[55] *See* 12 CFR 615.5335(a).

[56] *See* 12 CFR 3.6(b) and (c); 12 CFR part 208, appendix B and 12 CFR part 225, appendix D; 12 CFR 325.3; and 12 CFR 567.8.

[57] 12 CFR part 615, subpart M.

[58] A capital directive is defined in § 615.5355(a) as an order issued to an institution that does not have or maintain capital at or greater than the minimum ratios set forth in 12 CFR 615.5205, 615.5330, and 615.5335, or established under subpart L of part 615, or by a written agreement under an enforcement or supervisory action, or as a condition of approval of an application. The FCA's authority is set forth in sections 4.3(b)(2) and 4.3A(e) of the Farm Credit Act (12 U.S.C. 2154(b)(2) and 2154a(e)).

[59] *See* 12 U.S.C. 1831o for the prompt corrective action provisions that apply to commercial banks and savings associations.

indication of when we would impose additional and increasing supervisory oversight on an institution to address continuing deterioration in its financial condition and capital position from credit, interest rate, or other financial risks.

Question 14: We seek comment on revising our current capital directive regulations to include an early intervention framework. We also seek comment on potential financial thresholds, such as capital ratios or risk measures, that would trigger an FCA capital directive action.

M. Multi-Dimensional Regulatory Structure

As stated above, one of FCA's objectives is to implement a revised capital framework that improves the risk sensitivity of our capital rules while avoiding undue regulatory burden. There are currently five banks and 95 associations in the System with varying degrees of asset size, complexity of operations, and sophistication in their risk management practices. Some System institutions have the risk management capabilities to apply more complex, risk-sensitive regulatory capital requirements than other System institutions. It may be appropriate for the FCA to adopt more than one set of capital rules to account for these differences. However, this approach could result in different capital requirements for the same type of transaction and increase examination and oversight costs.

As described above, the other Federal financial regulatory agencies are in the process of proposing two sets of capital rules for the financial institutions they regulate. The implementation of the advanced capital framework would be limited, for the most part, to the largest, internationally active banks that meet certain infrastructure requirements. Other banks would implement a simpler capital framework patterned after the standardized approach of Basel II.

While our expectation is to implement a revised capital framework similar to the standardized approach of Basel II, we also recognize that some aspects of the advanced approaches may be appropriate for the larger, more complex System institutions. However, we are still reviewing the advanced approaches of Basel II and its potential application to the System. Therefore, we are not seeking comments on specific aspects of the advanced approaches at this time. Rather, we are considering the overall regulatory capital framework for the System in light of the changes occurring in the financial services industry and recent best practices for economic capital modeling.

Question 15: We seek comment on the most appropriate risk-based capital framework for the System and the reasons we should implement one framework over another. Should we consider creating a uniform regulatory capital structure for the System or a multi-dimensional regulatory structure and allow each System institution the option of choosing which capital framework it will apply? How might this new risk-based capital framework increase the costs or regulatory burden to the System? Would the increased costs be justified by improved risk sensitivity, risk management, and more efficient capital allocation?

N. Reporting Requirements and Transition Period [60]

The other Federal financial regulatory agencies have announced that they will be replacing Basel IA with a proposed rule that would provide all non-core banks the option of adopting the standardized approach under Basel II. Their stated intent is to finalize a standardized approach for non-core banks before the core banks begin their first transition period year under the advanced capital framework. Our objective is to minimize, to the extent possible, the time interval between the issuance of their final rule and ours. We also need a transition period to make appropriate modifications to the Call Reporting System to track the new risk-based capital requirements.

Question 16: We seek comment on an appropriate timetable for implementing our new risk-based capital rules. Specifically, what is an appropriate time interval between the issuance of the other Federal financial regulatory agencies' final rule on the standardized approach of Basel II and ours? How long should the transition period be to allow System institutions to adjust to the new risk-based capital rules?

Question 17: Additionally, we seek comment on any other methods that may be used to increase the risk sensitivity of our risk-based capital rules.

Dated: October 25, 2007.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

[FR Doc. E7–21422 Filed 10–30–07; 8:45 am]

BILLING CODE 6705–01–P

[60] This section was not in the previous ANPRM.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AF67

Small Business Size Standards; Fuel Oil Dealers Industries

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA) proposes to change the small business size standard for the Heating Oil Dealers industry (North American Industry Classification System (NAICS) code 454311)) from $11.5 million in average annual receipts to 50 employees, and the size standard for the Liquefied Petroleum Gas (Bottled Gas) Dealers industry (NAICS code 454312) from $6.5 million in average annual receipts to 50 employees. Large and fluctuating increases in the prices of heating oil and propane over the past several years indicate that a more stable measure of firm size based on number of employees rather than receipts is needed for these two industries.

DATES: SBA must receive comments to this proposed rule on or before November 30, 2007.

ADDRESSES: You may submit comments, identified by RIN 3245–AF67, by one of the following methods: (1) Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments; or (2) Mail/Hand Delivery/Courier: Gary M. Jackson, Assistant Director for Size Standards, 409 Third Street, SW., Mail Code 6530, Washington, DC 20416.

SBA will post all comments on www.Regulations.gov. If you wish to submit confidential business information (CBI) as defined in the User Notice at *www.Regulations.gov*, please submit the information to Diane Heal, Office of Size Standards, 409 Third Street, SW., Mail Code 6530, Washington, DC 20416, or send an e-mail to *sizestandards@sba.gov*. Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination of whether it will publish the information or not.

FOR FURTHER INFORMATION CONTACT: Diane Heal, Office of Size Standards, (202) 205–6618 or *sizestandards@sba.gov*.

SUPPLEMENTARY INFORMATION: Several small businesses, trade associations, and Members of Congress have requested that SBA review the $11.5 million size

standard for the Heating Oil Dealers industry and the $6.5 million size standard for the Liquefied Petroleum Gas (Bottled Gas) Dealers (LPG dealers) industry. The requesters contend that SBA should either increase the receipt-based size standards for these industries to account for the impact of large increases in crude oil costs on heating oil and propane prices over the past several years or establish a size standard based on the number of employees of a business concern. They point out that under the existing receipts size standard, a heating oil or LPG dealer currently defined as small may abruptly exceed the size standard due to large and unpredictable increases in crude oil costs, even though it continues to deliver the same quantity of fuel products. The reason is because the cost of such fuel products is included when calculating the firm's receipts for size purposes.

In addition to eligibility for SBA programs, small business status for heating oil and LPG dealers also determines the amount of registration fees business concerns and other organizational entities must pay to the U.S. Department of Transportation (DOT) for transporting hazardous materials (HAZMAT). Small businesses pay a lower HAZMAT fee than other organizations. For the 2006–2007 and 2007–2008 registration periods, small businesses pay $275 per year while all other registrants pay $1,000. Many organizations register for a 3-year period. The requestors are concerned that a large number of small heating oil and LPG dealers that registered in 2004 and 2005 now have average annual receipts exceeding the $11.5 million and $6.5 million size standard for these two industries due solely to significantly higher prices of heating oil and propane since that time and, therefore, will be subject to a substantially higher HAZMAT registration fee.

SBA's research of price trends for heating oil and propane verify that significant increases, as well as large fluctuations, in prices have occurred since 2002. The following table (Table 1) shows the residential prices of heating oil and propane as reported by the U.S. Energy Information Agency:

TABLE 1.—RESIDENTIAL PRICE OF HEATING OIL AND PROPANE—2002–2007

[Cents per gallon excluding taxes]

Year	Heating oil				Propane			
	Average	High	Low	Difference (high-low) (percent)	Average	High	Low	Difference (high-low) (percent)
2002	123.6	140.8	116.0	21.4	115.2	125.5	112.2	11.9
2003	156.6	185.4	134.4	37.9	139.9	172.2	126.8	35.8
2004	180.7	206.0	149.8	34.5	160.7	172.9	142.8	21.1
2005	228.3	269.2	194.6	38.3	184.8	200.6	171.4	17.0
2006	241.6	246.3	237.0	3.9	197.6	201.3	193.3	4.1
2007 (Jan.–Mar.)	242.1	249.6	233.3	7.0	201.0	204.6	198.6	3.0

Source: U.S. Energy Information Administration; *http://tonto.eia.doe.gov/dnav/pet/pet_pnp_wiup_dcu_nus_w.htm*

The data in the above table show that heating oil and propane average weekly prices have increased by 95.9 percent and 74.5 percent, respectively, between 2002 and 2007. Furthermore, prices have fluctuated by more than 35 percent in some years. On December 5, 2002, SBA had adjusted its receipts-based size standards by 8.7 percent to reflect the general rate of inflation in the economy since late 2001 (70 FR 72577). However, inflation in the heating oil and LPG industries has been greater than that level, substantiating the reasons for reviewing the existing size standards.

Although price data exists to support an adjustment to the existing size standards by a level significantly higher than the general rate of inflation, SBA believes a preferable approach for these industries is to establish an employee-based size standard. The small business status of many business concerns can fluctuate from year to year because of the instability and uncertainty of the cost of crude oil, which affects the retail prices of heating oil and liquid propane gas, and a business concerns receipts. SBA believes that an industry's size standard measure should reflect the magnitude of operations of a business concern. Because of the volatility of heating oil and propane prices, a size standard based upon number of employees better reflects the real level of operations of heating oil and LPG dealers than a receipts-based size standard.

SBA proposes to convert the existing heating oil and LPG dealers' receipts-based size standards to an equivalent employee-based size standard. The primary tool used to calculate an equivalent employee size standard associated with a receipts-based size standard is the receipts-to-employee ratio for an industry. Data to calculate these ratios were obtained by the SBA from the U.S. Bureau of the Census in a special tabulation of the 2002 Economic Census (The 2002 Economic Census is available at *http://www.census.gov/econ/census02/*). For purposes of this calculation, SBA will apply a receipts-to-employee ratio of small businesses at or near the current receipt-based size standard. The following table (Table 2) shows the receipts-to-employee ratios for the heating oil and LPG dealer industries and an employee equivalent size standard using these data.

TABLE 2.—RECEIPTS-TO-EMPLOYEE RATIO

Industry	Size standard	Receipts-employee-ratio	Employee equivalent size Standard (3) ÷ (4)
(1)	(2)	(3)	(4)
Heating Oil	$11,500,000	$292,750	39.3
LPG	6,500,000	188,319	35.5

SBA recognizes that this estimate, while precise, does not take into account two factors that may result in a small business currently eligible under the existing average annual receipts size standard losing eligibility under the above calculated employee equivalent size standard. First, receipts-to-employees ratios vary by business concern. For small businesses that have a lower receipts-to-employee ratio than average, a given level of receipts will support a higher number of employees than estimated, and visa versa. For example, the average receipts-to-employee ratio of all small businesses as opposed to the ratio for small businesses near the size standard in the heating oil industry is $225,973 and in the LPG dealers industry is $155,646. Using these ratios instead of those in column 3 of table 2, the employee equivalent size standards become 54.4 and 41.8 employees, respectively.

Second, under a 3-year average calculation of annual receipts, the size of an eligible small business in 1 or 2 of the 3-year averaging period may exceed the specific size standard. For example, a business concern with receipts of $3.0 million, $6.7 million and $8.0 million qualifies as small since its 3-year average equals $5.9 million. However, under an employee-based size standard, small business status is determined by the average number of employees over the past 12 months. Consequently, if SBA adopts an employee-based size standard by directly converting the level of a receipt-based size standard to number of employees, a business concern that is eligible under a 3-year average annual receipts may no longer qualify as small based on its average employment for the past 12 months. Assuming, for example, an eligible small business's current size is one-third higher than the current size standard, using the receipts-to-employee ratios in the above table the employee equivalent levels become 52.4 for heating oil dealers ($11,500,000 times 1.334 = $15,341,000 divided by $292,750) and 46 for LPG dealers ($6,500,000 times 1.334 = $8,671,000 divided by $188,319).

In converting the heating oil and LPG dealers' size standards to number of employees, SBA seeks to maintain current small business eligibility as it establishes an employee-based size standard. Unfortunately, SBA does not have data at the firm level for receipts-to-employee ratios or on the historical distribution of receipts of individual business concerns by which to estimate a typical current level of receipts for small businesses whose 3-year average is at or below the size standard. In lieu of such data, SBA believes that adopting 50 employees for both industries, as indicated by the above examples, will adequately address those considerations in converting the existing average annual receipts size standards to an appropriate employee-based size standard.

In proposing the 50-employee size standard, SBA would establish additional employee size standard level. SBA has established a general 500-employee size standard for the manufacturing sector and 100-employee size standard for the wholesale sector. After analyzing the heating oil and LPG industries, the 500- and 100-employee size standards would significantly increase the size standard for these two relevant industries. Rather than selecting one of the existing established employee levels, SBA believes it is more important to maintain the size status of businesses in these two industries and change only the size measure from revenue to number of employee. As stated earlier, the purpose of this rulemaking is not to increase the size standard, but to change the measure so it is not susceptible to the volatile prices of heating oil and propane. In March 2004, we proposed to convert all receipts-based size standards to number of employees (69 FR 13130, March 19, 2004). For the heating oil and LPG dealers industries, SBA proposed 50 employees and received no adverse comments. However, SBA withdrew the entire rule due to concerns unrelated to the heating oil and LPG dealers industries. SBA encourages comments on whether the proposed 50-employee standard is sufficient to maintain current small business eligibility.

Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

The Office of Management and Budget (OMB) has determined that this proposed rule is not a significant regulatory action for purposes of Executive Order 12866. In addition, this rule is not a major rule under the Congressional Review Act, 5 U.S.C. 800.

For purposes of Executive Order 12988, SBA has determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in that Order.

For purposes of Executive Order 13132, SBA has determined that this rule does not have any federalism implications warranting the preparation of a federalism assessment.

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this rule would not impose new reporting or recordkeeping requirements. Although the measure of size changes from receipts to number of employees, business concerns must maintain records on employees (such as payroll records) in the course of business. Providing information to SBA on the number of employees would occur only as a result of a request for a size determination related to an application for small business assistance.

Initial Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act, this rule, if finalized, may have a significant impact on a substantial number of small entities in the heating oil and LPG dealers industries. This rule may affect the eligibility of heating and LPG dealers seeking SBA 7(a) Loans, SBA Economic Impact Disaster Loans, DOT HAZMAT Registration Program fees, and assistance from other Federal small business programs.

Immediately below, SBA sets forth an initial regulatory flexibility analysis of this proposed rule addressing the following questions: (1) What is the

need for and objective of the rule, (2) what is SBA's description and estimate of the number of small entities to which the rule will apply, (3) what is the projected reporting, record keeping, and other compliance requirements of the rule, (4) what are the relevant Federal rules which may duplicate, overlap or conflict with the rule, and (5) what alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?

1. *What is the need for and objective of the rule?* Significant increases and fluctuations in crude oil costs render a receipts-based size standard for the heating oil and LGP dealers industries an unsuitable measure of a dealer's level of business activity. Converting the existing receipts-based size standard to an employee-based size standard provides a more accurate measure of the operations of a heating oil dealer and LPG dealer and ensures a more stable small business designation to dealers of these fuel products.

2. *What is SBA's description and estimate of the number of small entities to which the rule will apply?* Based on data from the SBA's special tabulation of the U.S. Bureau of the Census's 2002 Economic Census, there were 3,729 small heating oil dealers and 2,005 small LPG dealers under the existing size standards. Taking into account historical trends of residential heating oil and propane prices between 2002 and 2007, 349 heating oil dealers and 269 LPG dealers may exceed the existing size standard due solely to higher receipts generated by higher prices. Establishing the proposed employee-based size standard for these two industries will restore the small business eligibility of those dealers.

3. *What are the projected reporting, record keeping, and other compliance requirements of the rule and an estimate of the classes of small entities which will be subject to the requirements?* Establishing an employee-based size standard for heating oil and LPG dealers does not impose any additional reporting, record keeping, or compliance requirements on small entities. Although the measure of size changes from receipts to number of employees, business concerns must maintain records on employees in the course of business. In response to a request for a size determination related to an application for small business assistance, small businesses must provide information on receipts or number of employees. This proposed rule does not create a new requirement to provide size information, only what type of information that is requested in reviewing a business concern's size.

4. *What are the relevant Federal rules which may duplicate, overlap or conflict with the rule?* This proposed rule overlaps with other Federal rules that use SBA's size standards to define a small business. Under Sec. 3(a)(2)(C) of the Small Business Act, 15 U.S.C. 632(a)(2)(c), Federal agencies must use SBA's size standards to define a small business, unless specifically authorized by statute. In 1995, SBA published in the **Federal Register** a list of statutory and regulatory size standards that identified the application of SBA's size standards as well as other size standards used by Federal agencies (60 FR 57988–57991, dated November 24, 1995). In cases where an SBA size standard is not appropriate, the Small Business Act and SBA's regulations allow Federal agencies to develop different size standards with the approval of the SBA Administrator (13 CFR 121.902). For purposes of a regulatory flexibility analysis, agencies must consult with SBA's Office of Advocacy when developing different size standards for their programs (13 CFR 121.902(b)(4)).

As discussed in the preamble, the most significant impact of this proposed rule would be on heating oil and LPG dealers that register with the DOT's HAZMAT Registration Program. DOT utilizes SBA's size standard to determine which registrants are eligible for a lower fee charged to small businesses. During the 2006–07 registration period, 2,194 heating oil dealers and 1,482 LPG dealers submitted HAZMAT applications. Of these, 2,111 heating oil and 1,406 LPG dealers qualified as small.

5. *What alternatives will allow the Agency to accomplish its regulatory objectives while minimizing the impact on small entities?* SBA considered two alternatives to the proposed 50-employee size standard. First, SBA considered revising the existing size standards to account for the above average inflation increases of heating oil and propone price since 2002. As discussed in the preamble, SBA is concerned that with the wide fluctuations of these fuel prices the small business status of many heating oil and LPG dealers may change from year-to-year depending on the prices. An employee size standard is unaffected by inflation and provides stability in the small business status of heating oil and LPG dealers.

Second, SBA considered excluding the cost of fuel products in the calculation of receipts size. This approach adds more complexity and uncertainty to the calculation of business size. This approach would also put an undue administrative burden on the small businesses in these industries by requiring them to separate out 3 years of receipts for the costs of fuel products in order to calculate their size status. This is not a common business practice for business concerns in this and similar service industries. SBA believes that receipts size standards should continue to be on a gross receipts concept. Otherwise, SBA and business concerns will encounter more difficulty in determining and validating small status.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, SBA proposes to amend 13 CFR part 121 as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(b), 637(a), 644, and 662(5); and Pub. L. 105–135, Sec. 401, *et seq.,* 111 Stat, 2592.

2. In § 121.201, in the table ''Small Business Size Standards by NAICS Industry,'' under the heading ''Sector 44–45—Retail Trade,'' ''Subsector 454—Nonstore Retailers,'' revise the entries for 454311 and 454312 to read as follows:

§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
*	* * * * *	*	*
	Sector 44–45—Retail Trade		
*	* * * * *	*	*
	Subsector 454—Nonstore Retailing		
*	* * * * *	*	*
454311	Heating Oil Dealers		50
454312	Liquefied Petroleum Gas (Bottled Gas) Dealers		50
*	* * * * *	*	*

Dated: October 24, 2007.

Steven C. Preston,

Administrator.

[FR Doc. E7–21401 Filed 10–30–07; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0115; Directorate Identifier 2007–CE–080–AD]

RIN 2120–AA64

Airworthiness Directives; REIMS AVIATION S.A. Model F406 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

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

On several occasions, leaks of the landing gear emergency blowdown bottle have been reported. Investigations revealed that the leakage was located on the nut manometer because of a design deficiency in the bottle head.

If left uncorrected, the internal bottle pressure could not be maintained to an adequate level and could result in a malfunction, failing to extend landing gears during emergency situations.

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

DATES: We must receive comments on this proposed AD by November 30, 2007.

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

- *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.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–0115; Directorate Identifier 2007–CE–080–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD No.: 2007–0190, dated July 12, 2007 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

On several occasions, leaks of the landing gear emergency blowdown bottle have been reported. Investigations revealed that the leakage was located on the nut manometer because of a design deficiency in the bottle head.

If left uncorrected, the internal bottle pressure could not be maintained to an adequate level and could result in a malfunction, failing to extend landing gears during emergency situations.

The MCAI requires you to replace the old landing gear emergency blowdown

bottle with a newly designed landing gear emergency blowdown bottle.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

REIMS AVIATION S.A. has issued REIMS AVIATION INDUSTRIES Service Bulletin No.: F406–66, dated May 7, 2007. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the Proposed AD

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

Differences Between This Proposed AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 7 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $11,330 per product.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $79,870, or $11,410 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

REIMS AVIATION S.A.: Docket No. FAA–2007–0115; Directorate Identifier 2007–CE–080–AD.

Comments Due Date

(a) We must receive comments by November 30, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to F406 airplanes, all serial numbers, that are:

(1) Equipped with landing gear emergency blowdown bottle part number (P/N) 9910154–4; and

(2) Certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 32: Landing Gear.

Reason

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

On several occasions, leaks of the landing gear emergency blowdown bottle have been reported. Investigations revealed that the leakage was located on the nut manometer because of a design deficiency in the bottle head.

If left uncorrected, the internal bottle pressure could not be maintained to an adequate level and could result in a malfunction, failing to extend landing gears during emergency situations.

The MCAI requires you to replace the old landing gear emergency blowdown bottle with a newly designed landing gear emergency blowdown bottle.

Actions and Compliance

(f) Unless already done, within the next 12 calendar months after the effective date of this AD remove the emergency blowdown bottle P/N 9910154–4 and install the new emergency blowdown bottle P/N 4063700–1 following the accomplishment instructions of the REIMS AVIATION Industries Service Bulletin No.: F406–66, dated May 7, 2007.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District

Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2007–0190, dated July 12, 2007; and REIMS AVIATION INDUSTRIES Service Bulletin No.: F406–66, dated May 7, 2007, for related information.

Issued in Kansas City, Missouri, on October 25, 2007.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–21400 Filed 10–30–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0116; Directorate Identifier 2007–CE–082–AD]

RIN 2120–AA64

Airworthiness Directives; PILATUS AIRCRAFT LTD. Model PC–12, PC–12/45, and PC–12/47 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

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

It has been found that some of the above mentioned MLG special bolts can be defective. The problem is only applicable to specific bolts with serial numbers that start with the letters AT or have the supplier code AT. Investigations revealed that there is a possibility for hydrogen embrittlement which occurs during the manufacture process.

Components in this condition can decrease the specific fatigue life and could lead to MLG collapse during operation with consequent loss of airplane control.

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

DATES: We must receive comments on this proposed AD by November 30, 2007.

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

- *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.

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–0116; Directorate Identifier 2007–CE–082–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

The Federal Office of Civil Aviation (FOCA), which is the aviation authority for Switzerland, has issued FOCA AD HB–2007–382, dated August 27, 2007 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

It has been found that some of the above mentioned MLG special bolts can be defective. The problem is only applicable to specific bolts with serial numbers that start with the letters AT or have the supplier code AT. Investigations revealed that there is a possibility for hydrogen embrittlement which occurs during the manufacture process.

Components in this condition can decrease the specific fatigue life and could lead to MLG collapse during operation with consequent loss of airplane control.

In order to correct the situation, this AD requires the identification of all MLG special bolts to determine if the bolts have serial numbers that start with the letters AT or have the supplier code AT and the replacement of affected special bolts.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

PILATUS AIRCRAFT LTD. has issued PILATUS AIRCRAFT LTD. PC–12 Service Bulletin No: 32–020, dated July 24, 2007. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the Proposed AD

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

Differences Between This Proposed AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use

different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 480 products of U.S. registry. We also estimate that it would take about .5 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $19,200, or $40 per product.

In addition, we estimate that any necessary follow-on actions would take about 4 work-hours and require parts costing $2,300, for a cost of $2,620 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Pilatus Aircraft Limited: Docket No. FAA–2007–0116; Directorate Identifier 2007–CE–082–AD.

Comments Due Date

(a) We must receive comments by November 30, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to PC–12, PC–12/45, and PC–12/47 airplanes, serial numbers 101 through 749, certificated in any category; with one of more of the following installed:

(1) Main landing gear (MLG) assemblies delivered before December 31, 2006, with the following part numbers (P/N): 532.10.12.037, 532.10.12.038, 532.10.12.041, 532.10.12.042, 532.10.12.043, 532.10.12.044, 532.10.12.047, 532.10.12.048, 532.10.12.049, 532.10.12.050, 532.10.12.051, or 532.10.12.052;

(2) Special bolts P/N 532.10.12.110, 532.10.12.205, 532.10.12.077, or 532.10.12.202 delivered before December 31, 2006; or

(3) Modification kit numbers 500.50.12.267, 500.50.12.286, or 500.50.12.299 delivered before December 31, 2006.

Subject

(d) Air Transport Association of America (ATA) Code 32: Landing Gear.

Reason

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

It has been found that some of the above mentioned MLG special bolts can be defective. The problem is only applicable to specific bolts with serial numbers that start with the letters AT or have the supplier code AT. Investigations revealed that there is a possibility for hydrogen embrittlement which occurs during the manufacture process.

Components in this condition can decrease the specific fatigue life and could lead to MLG collapse during operation with consequent loss of airplane control.

In order to correct the situation, this AD requires the identification of all MLG special bolts to determine if the bolts have serial numbers that start with the letters AT or have the supplier code AT and the replacement of affected special bolts.

Actions and Compliance

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

(1) Within the next 100 hours time-in-service (TIS) after the effective date of this AD or within the next 3 months after the effective date of this AD, whichever occurs first, inspect the special bolts that attach the MLG retraction actuators and the special bolts that attach the shock absorbers to the MLG assemblies to identify the serial numbers that start with the letters AT or have the supplier code AT following PILATUS AIRCRAFT LTD. PC–12 Service Bulletin No: 32–020, dated July 24, 2007.

(2) If during the inspection required in paragraph (f)(1) of this AD any special bolts with the serial number starting with the letters AT or special bolts with the supplier code AT are found, before further flight, replace the specified bolts with new bolts with the new part numbers in all MLG assemblies following PILATUS AIRCRAFT LTD. PC–12 Service Bulletin No: 32–020, dated July 24, 2007.

(3) As of the effective date of this AD, do not install any of the special bolts that have serial numbers that start with the letters AT or have the supplier code AT on Models PC–12, PC–12/45, and PC–12/47 airplanes as indicated in PILATUS AIRCRAFT LTD. PC–12 Service Bulletin No: 32–020, dated July 24, 2007. MLG assemblies, special bolts, and modifications kits, as referenced in paragraphs (c)(1), (c)(2), and (c)(3) of this AD, delivered from PILATUS AIRCRAFT LTD. on or after December 31, 2006, will not incorporate the unsafe condition.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust,

Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to Federal Office of Civil Aviation (FOCA) AD HB–2007–382, dated August 27, 2007; and PILATUS AIRCRAFT LTD. PC–12 Service Bulletin No: 32–020, dated July 24, 2007, for related information.

Issued in Kansas City, Missouri, on October 24, 2007.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–21421 Filed 10–30–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–107592–00; REG–105964–98]

RIN 1545–BA11; RIN 1545–AW30

Consolidated Returns; Intercompany Obligations; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking and withdrawal of proposed regulations.

SUMMARY: This document contains corrections to a notice of proposed rulemaking (REG–107592–00) and withdrawal of proposed regulations (REG–105964–98) that were published in the **Federal Register** on Friday, September 28, 2007 (72 FR 55139) providing guidance regarding the treatment of transactions involving obligations between members of a consolidated group and the treatment of transactions involving the provision of insurance between members of a consolidated group. The regulations will affect corporations filing consolidated returns.

FOR FURTHER INFORMATION CONTACT: Frances L. Kelly, (202) 622–7770 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The correction notice that is the subject of this document is under section 1502 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking (REG–107592–00) and withdrawal of proposed regulations (REG–105964–98) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of proposed rulemaking (REG–107592–00) and withdrawal of proposed regulations (REG–105964–98), which were the subjects of FR Doc. E7–19134, is corrected as follows:

1. On page 55142, column 3, in the preamble, under the paragraph heading ''E. Material Tax Benefit Rule'', eleventh line of the third paragraph, the language ''a material tax benefit that would not'' is corrected to read ''a material Federal tax benefit that would not''.

2. On page 55143, column 1, in the preamble, under the paragraph heading ''F. Off-Market Issuance Rule'', eleventh line of the second paragraph of the column, the language ''tax benefit. In such cases, the'' is corrected to read ''Federal tax benefit. In such cases, the''.

3. On page 55143, column 1, in the preamble, under the paragraph heading ''G. Outbound Transactions'', eighth line of the first paragraph, the language ''obligation that became intercompany'' is corrected to read ''obligation that became an intercompany''.

4. On page 55144, column 1, in the preamble, under the paragraph heading ''I. Other Request for Comments'', eleventh line of the first full paragraph of the column, the language ''and basis (such as the issuance of note'' is corrected to read ''and basis (such as the issuance of a note''.

§ 1.1502–13 [Corrected]

5. On page 55146, column 2, § 1.1502–13(g)(2)(v), second line of the paragraph, the language ''of a material net reduction in income or'' is corrected to read ''of, for Federal tax purposes, a material net reduction in income or''.

6. On page 55146, column 3, § 1.1502–13(g)(3)(i)(B), last line of the paragraph, the language ''or (*6*) of this section apply.'' is corrected to read '' or (*6*) of this section apply. The exceptions are as follows.''.

7. On page 55147, column 3, § 1.1502–13(g)(4)(iii), last line of the paragraph, the language ''market interest rates.'' is corrected to read ''market interest rates).''.

8. On page 55149, column 2, § 1.1502–13(g)(7)(ii) *Example 2.*(vi), sixth line of the paragraph, the language ''as selling all of its assets to X, including the'' is corrected to read ''as selling all of its assets to new S, including the''.

9. On page 55149, column 2, § 1.1502–13(g)(7)(ii) *Example 2.*(vi), seventeenth line of the paragraph, the language ''to X for $70, the amount realized with'' is corrected to read ''to new S for $70, the amount realized with''.

10. On page 55150, column 3, § 1.1502–13(g)(7)(ii) *Example 6.*(i), sixth line of the paragraph, the language ''repayment of $100 at the end of year 5. The'' is corrected to read ''repayment of $100 at the end of year 20. The''.

11. On page 55151, column 1, § 1.1502–13(g)(7)(ii) *Example 8.*(i), third line of the paragraph, the language ''from a separate return limitation year (SRLY).'' is corrected to read ''from a separate return limitation year that is subject to limitation under § 1.1502–21(c) (a SRLY loss).''.

12. On page 55151, column 2, § 1.1502–13(g)(7)(ii) *Example 9.*(i), third through fourth lines of the paragraph, the language ''material loss from a separate return limitation year (SRLY). T's sole shareholder,'' is corrected to read ''material SRLY loss. T's sole shareholder,''.

13. On page 55151, column 3, § 1.1502–13(g)(7)(ii) *Example 10.*(iii), ninth line of the paragraph, the language ''principal amount, and a fair market value of'' is corrected to read ''principal amount, and fair market value of''.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E7–21464 Filed 10–30–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 300

[REG–134923–07]

RIN 1545–BG88

User Fees Relating to Enrollment to Perform Actuarial Services

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to user fees for the initial and renewed enrollment to become an enrolled actuary. The charging of user fees is authorized by the Independent Offices Appropriations Act (IOAA) of 1952. This document also contains a notice of public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by November 30, 2007.

Outlines of topics to be discussed at the public hearing scheduled for November 26, 2007, at 10 a.m., must be received by November 19, 2007.

ADDRESSES: Send comments to: CC:PA:LPD:PR (REG–134923–07), 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–134923–07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, submissions may be sent electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–134923–07).

FOR FURTHER INFORMATION CONTACT: Concerning submissions of comments and/or to be placed on the building access list to attend the hearing *Richard A.Hurst@irscounsel.treas.gov* or at (202) 622–7180; concerning cost methodology, Eva J. Williams at (202) 435–5514; concerning the proposed regulations, Joel Rutstein at (202) 622–4940 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The Employee Retirement Income Security Act of 1974 (Pub. L. 93–406) ordered the Secretary of Labor and the Secretary of Treasury to establish a Joint Board for the Enrollment of Actuaries. 29 U.S.C. 1241. The Joint Board shall, by regulation, establish reasonable standards and qualifications for persons performing actuarial services and the Joint Board shall enroll such individuals who, upon application, satisfy such standards and qualifications. 29 U.S.C. 1242(a). The regulations at 20 CFR Part 901, Subpart B address eligibility for enrollment and renewal of enrollment. Pursuant to the Joint Board's bylaws, the Secretary of the Treasury is to appoint an Executive Director to the Board who has the delegated authority to administer the Board's enrollment program. The Secretary of the Treasury has delegated these functions to the Internal Revenue Service and the costs of these activities are borne by the Service.

20 CFR 901.11(d)(4) provides for a reasonable non-refundable fee for applications for renewal of enrollment. Form 5434–A, ''Application for Renewal of Enrollment'' presently states that the renewal fee is $25. Proposed 26 CFR 300.7 and 300.8 establish separate $250 user fees for the enrollment and renewal of enrollment process. These fees represent the IRS's costs in administering the program, and the $250 fee for renewal of enrollment will supplant the $25 fee.

Authority

The IOAA of 1952 (31 U.S.C. 9701) authorizes agencies to prescribe regulations that establish charges for services provided by the agency. The charges must be fair and be based on the costs to the Government, the value of the service to the recipient, the public policy or interest served, and other relevant facts. The IOAA of 1952 provides that regulations implementing user fees are subject to policies prescribed by the President, which are currently set forth in OMB Circular A–25, 58 FR 38142 (July 15, 1993) (the OMB Circular).

The OMB Circular encourages user fees for government-provided services that confer benefits on identifiable recipients over and above those benefits received by the general public. Under the OMB Circular, an agency that seeks to impose a user fee for government-provided services must calculate its full cost of providing those services. In general, a user fee should be set at an amount in order for the agency to recover the cost of providing the special service, unless the Office of Management and Budget grants an exception. Pursuant to the guidelines in the OMB Circular, the IRS has calculated its cost of providing services under the enrolled actuaries program. The IRS has determined that the full cost of administering the enrollment and re-enrollment processes is $250 per enrolled actuary per process.

The proposed user fees will be implemented under the authority of the IOAA of 1952 and the OMB Circular.

Proposed Effective Date

These regulations are proposed to apply 30 days after the date of publication in the **Federal Register** of the final 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 is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This certification is based on the information that follows. These proposed rules affect enrolled actuaries, of which there are currently 4,600 active. The economic impact of these regulations on any small entity would result from a small entity, including a sole proprietor, being required to pay a fee prescribed by these regulations in order to obtain a particular service. The appropriate NAICS codes for enrolled actuaries relate to Insurance—Other (524298) and Administrative and General Management Consulting, Including Financial Consulting (541611). Entities identified under these codes are considered small under the SBA size standards (13 CFR 121.201) if their annual revenue is less than $6.5 million. The IRS estimates that as many as 2,070 enrolled actuaries may be operating as or employed by small entities. Therefore, the IRS has determined that these proposed rules will affect a substantial number of small entities. The dollar amounts of the fees are not, however, substantial enough to have a significant economic impact on any entity subject to the fees. The amounts of the fees are commensurate with, if not less than, the amount charged by professional organizations. Persons who elect to apply for enrollment or renewal of enrollment also receive benefits from obtaining the enrolled actuary designation. Pursuant to section 7805(f) of the Internal Revenue 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.

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 IRS and Treasury Department request comments on the substance of the proposed regulations, as well as 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 after date of hearing listed above for November 26, 2007 at 10 a.m. in room 3716. Due to building security procedures, 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 electronic or written comments by November 30, 2007 and an outline of the comments to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by November 19, 2007. A period of ten (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 regulations is Joel S. Rutstein of the Office of the Associate Chief Counsel (Procedure & Administration).

List of Subjects in 26 CFR Part 300

Reporting and recordkeeping requirements, User fees.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 300 is proposed to be amended as follows:

PART 300—USER FEES

Paragraph 1. The authority citation for part 300 continues to read as follows:

Authority: 31 U.S.C. 9701.

Par. 2. Section 300.0 is amended as follows:

1. Paragraphs (b)(7) and (b)(8) are added.

2. Paragraph (c) is revised.

The additions and revision read as follows:

§ 300.0 User fees, in general.

* * * * *

(b) * * *

(7) Enrolling an enrolled actuary.

(8) Renewing the enrollment of an enrolled actuary.

(c) *Effective/applicability date.* This part 300 is applicable March 16, 1995, except that the user fee for processing offers in compromise is applicable November 1, 2003; the user fee for the special enrollment examination, enrollment, and renewal of enrollment for enrolled agents is applicable November 6, 2006; the user fee for entering into installment agreements on or after January 1, 2007, is applicable January 1, 2007; the user fee for restructuring or reinstatement of an installment agreement on or after January 1, 2007, is applicable January 1, 2007; and the user fee for the enrollment and renewal of enrollment for enrolled actuaries is applicable thirty days after the date of publication in the **Federal Register** of the final regulations.

Par. 3. Section 300.7 is added to read as follows:

§ 300.7 Enrollment of enrolled actuary fee.

(a) *Applicability.* This section applies to the initial enrollment of enrolled actuaries with the Joint Board for the Enrollment of Actuaries pursuant to 20 CFR part 901.

(b) *Fee.* The fee for initially enrolling as an enrolled actuary with the Joint Board for the Enrollment of Actuaries is $250.00.

(c) *Person liable for the fee.* The person liable for the enrollment fee is the applicant filing for enrollment as an enrolled actuary with the Joint Board for the Enrollment of Actuaries.

Par. 4. Section 300.8 is added to read as follows:

§ 300.8 Renewal of enrollment of enrolled actuary fee.

(a) *Applicability.* This section applies to the renewal of enrollment of enrolled actuaries with the Joint Board for the Enrollment of Actuaries pursuant to 20 CFR Part 901.

(b) *Fee.* The fee for renewal of enrollment as an enrolled actuary with the Joint Board for the Enrollment of Actuaries is $250.00.

(c) *Person liable for the fee.* The person liable for the renewal of enrollment fee is the person renewing their enrollment as an enrolled actuary with the Joint Board for the Enrollment of Actuaries.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 07–5428 Filed 10–26–07; 4:29 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2007–29354]

RIN 1625–AA87

Security Zone; Nawiliwili Harbor, Kauai, HI

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: The Coast Guard is extending the comment period for its notice of proposed rulemaking published October 3, 2007, to create a security zone in the waters of Nawiliwili Harbor, Kauai, and on the land of the jetty south of Nawiliwili Park, including the jetty access road commonly known as Jetty Road. The proposed security zone is intended to enable the Coast Guard and its law enforcement partners to better protect people, vessels, and facilities in and around Nawiliwili Harbor in the face of non-compliant obstructers who have impeded, and threaten to continue impeding, the safe passage of the Hawaii Superferry in Nawiliwili Harbor. The proposed rule complements, but does not replace or supersede, existing regulations that establish a moving 100-yard security zone around large passenger vessels like the Hawaii Superferry.

DATES: Comments and related material must reach the Coast Guard on or before November 20, 2007.

SUPPLEMENTARY INFORMATION:

ADDRESSES: You may submit comments and related material, identified by Coast Guard docket number USCG–2007–29354, in any of the three methods listed below. To avoid duplication, please use only one of the following methods:

(1) *Mail:* Lieutenant Sean Fahey, Coast Guard District 14 (dl), PJKK Federal Building, 300 Ala Moana Blvd., Honolulu, HI 96850.

(2) *Electronically:* E-mail to Lieutenant Sean Fahey at *Sean.C.Fahey@uscg.mil* using the

subject line ''Comment—Kauai Security Zone.''

(3) *Fax:* (808) 541–2101.

All comments will be reviewed as they are received. Additionally, all comments submitted will ultimately be available for viewing on the Federal eRulemaking Portal at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Lieutenant Sean Fahey, U.S. Coast Guard District 14 at (808) 541–2106.

Request for Additional Comments

On October 3, 2007, we published a notice of proposed rulemaking (NPRM) entitled ''Security Zone; Nawiliwili Harbor, Kauai, Hawaii'' in the **Federal Register** (72 FR 56308). The comment period for the NPRM was originally set to expire on October 24, 2007. Although we received many comments on the subject rule, a few people wishing to submit comments expressed difficulty using the Federal eRulemaking Portal, one of the four methods available to submit comments on the NPRM. Recently, the Coast Guard migrated its online rulemaking docket from the Docket Management System (DMS) to the Federal Docket Management System (FMS) (72 FR 54315, Sept. 24, 2007), and this migration was accompanied by transition difficulties and delays in comments being posted on FDMS. So we will continue to accept comments on the propose rule until November 20, 2007. Comments may be submitted in one of the three methods listed in the **ADDRESSES** section of this rule. Based on the comments we receive, we may change the rule.

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please identify the docket number for this rulemaking (USCG–2007–29354), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name, mailing address, and an e-mail address or other contact information in the body of your document to ensure that you can be identified as the submitter. This also allows us to contact you in the event further information is needed or if there are questions. For example, if we cannot read your submission due to technical difficulties and you cannot be contacted, your submission may not be considered. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know your comments reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Temporary Final Rule

Concurrent with this notice to extend the comment period, the Coast Guard is also publishing a temporary final rule for a security zone in Nawiliwili Harbor. That temporary final rule can be found elsewhere in this issue of the **Federal Register**. The temporary final rule is being issued on an emergency basis to ensure that there is a security zone in place after the current security zone (72 FR 50877, September 5, 2007) expires on October 31, 2007. That temporary final rule is of limited duration—it will be in effect from November 1, 2007, through November 30, 2007—and is necessary to ensure the safety and security of water-based and land-based obstructers, as well as the passengers and crew of the Superferry, should the Superferry transit through Nawiliwili Harbor.

Public Meeting

During this extended comment period, you may also submit a request for a public meeting. Based on the comments we receive, we may choose to hold a public meeting. You may submit a request for a public meeting to Lieutenant Sean Fahey at U.S. Coast Guard District 14, PJKK Federal Building, 300 Ala Moana Blvd., Honolulu, Hawaii 96850, explaining why one would be beneficial. The deadline for submitting requests is November 20, 2007.

If we determine that a public meeting would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Dated: October 24, 2007.

Sally Brice-O'Hara,

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

[FR Doc. 07–5412 Filed 10–26–07; 2:34 pm]

BILLING CODE 4910–15–P

LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 382

[Docket No. 2006–1 CRB DSTRA]

Adjustment of Rates and Terms for Preexisting Subscription and Satellite Digital Audio Radio Services

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Royalty Judges are publishing for comment proposed regulations that set the rates and terms for the use of sound recordings by preexisting subscription services for the period January 1, 2008, through December 31, 2012.

DATES: Comments and objections, if any, are due no later than November 30, 2007.

ADDRESSES: Comments and objections may be sent electronically to *crb@loc.gov*. In the alternative, send an original, five copies and an electronic copy on a CD either by mail or hand delivery. Please do not use multiple means of transmission. Comments and objections may not be delivered by an overnight delivery service other than the U.S. Postal Service Express Mail. If by mail (including overnight delivery), comments and objections must be addressed to: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977. If hand delivered by a private party, comments and objections must be brought to the Copyright Office Public Information Office, Library of Congress, James Madison Memorial Building, Room LM–401, 101 Independence Avenue, SE., Washington, DC 20559–6000. If delivered by a commercial courier, comments and objections must be delivered between 8:30 a.m. and 4 p.m. to the Congressional Courier Acceptance Site located at 2nd and D Street, NE., Washington, DC, and the envelope must be addressed to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM–403, 101 Independence Avenue, SE., Washington, DC 20559–6000.

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

SUPPLEMENTARY INFORMATION:

Background

Section 106(6) of the Copyright Act, title 17 of the United States Code, gives a copyright owner of sound recordings an exclusive right to perform the copyrighted works publicly by means of a digital audio transmission. This right is limited by section 114(d), which allows certain non-interactive digital audio services, including preexisting subscription services, to make digital transmissions of a sound recording under a compulsory license, provided the services pay a reasonable royalty fee and comply with the terms of the license. Moreover, these services may

make any necessary ephemeral reproductions to facilitate the digital transmission of the sound recording under a second license set forth in section 112(e) of the Copyright Act. The terms and rates for this statutory license have been adjusted periodically by the Librarian of Congress and appear in 37 CFR Part 260. However, the Copyright Royalty and Distribution Reform Act of 2004, Pub. L. No. 108–419, transferred jurisdiction over these rates and terms to the Copyright Royalty Judges (''Judges''). 17 U.S.C. 801(b)(1). The current rates applicable to preexisting subscription services expire on December 31, 2007.

On January 9, 2006, pursuant to 17 U.S.C. 803(b)(1)(A)(i)(V), the Copyright Royalty Judges published a notice in the **Federal Register** announcing commencement of the proceeding to determine rates and terms of royalty payments under sections 114 and 112 for the activities of preexisting subscription services [1] and requesting interested parties to submit their petitions to participate. 71 FR 1455 (January 9, 2006). Petitions to participate in the proceeding to set these rates and terms were received from SoundExchange, Inc. and Music Choice.

The Judges set the schedule for the proceeding, including the dates for the filing of written direct statements as well as the dates for oral testimony. Subsequent to the filing of their written direct statements, but prior to the oral presentation of witnesses, SoundExchange and Music Choice informed the Judges that they had ''reached a settlement of all issues between them in this proceeding, including the rates and terms for the statutory license applicable to pre-existing subscription services'' under sections 114 and 112 of the Copyright Act for the period from January 1, 2008, through December 31, 2012. Notice of Settlement at 1 (filed June 12, 2007). They also stated that the settlement agreement would be submitted to the Judges ''for approval and adoption pursuant to 17 U.S.C. 801(b)(7)(A).'' *Id.* at 2. The settlement agreement, including the proposed rates and terms, was filed on October 19, 2007.

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

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

17 U.S.C. 801(b)(7)(A). Rates and terms adopted pursuant to this provision are binding on all copyright owners of sound recordings and preexisting subscription services performing the sound recordings for the license period 2008–2012.

As part of this notice of proposed rulemaking, the Copyright Royalty Judges are modifying two aspects of the proposed rates and terms. First, the submitted proposal placed the rates and terms in part 260, which is in Chapter II of 37 CFR. Chapter II contains the regulations of the Copyright Office, not the Copyright Royalty Board. Therefore, we are changing the numbering of the proposed regulations to reflect their proper location in Chapter III of 37 CFR.

Second, proposed §§ 260.5(c) and 260.6(c) (now 382.5(c) and 382.6(c), respectively) require that interested parties intending to conduct an audit of a service or of the entity making the royalty payment, respectively, file with the Copyright Office a notice of intent to audit. We are changing these provisions to require that such notices of intent to audit be filed with the Copyright Royalty Board rather than the Copyright Office.

As discussed above, the public may comment and object to any or all of the proposed regulations contained in this notice of proposed rulemaking. Those who do comment and object, however, must be prepared to participate in further proceedings in this docket to establish rates and terms for the activities of preexisting subscription services under the sections 112 and 114 licenses.

List of Subjects in 37 CFR Part 382

Copyright, Digital audio transmissions, Performance right, Sound recordings.

Proposed Regulations

For the reasons set forth in the preamble, the Copyright Royalty Judges propose to add part 382 to Chapter III of title 37 of the Code of Federal Regulations to read as follows:

PART 382—RATES AND TERMS FOR PREEXISTING SUBSCRIPTION SERVICES' DIGITAL TRANSMISSIONS OF SOUND RECORDINGS AND MAKING OF EPHEMERAL PHONORECORDS

Sec.
382.1 General.
382.2 Royalty fees for the digital performance of sound recordings and the making of ephemeral phonorecords by preexisting subscription services.
382.3 Terms for making payment of royalty fees.
382.4 Confidential information and statements of account.
382.5 Verification of statements of account.
382.6 Verification of royalty payments.
382.7 Unknown copyright owners.

Authority: 17 U.S.C. 112(e), 114, and 801(b)(1).

§ 382.1 General.

(a) This part 382 establishes rates and terms of royalty payments for the public performance of sound recordings by nonexempt preexisting subscription services in accordance with the provisions of 17 U.S.C. 114(d)(2), and the making of ephemeral phonorecords in connection with the public performance of sound recordings by nonexempt preexisting subscription services in accordance with the provisions of 17 U.S.C. 112(e).

(b) Upon compliance with 17 U.S.C. 114 and the terms and rates of this part, nonexempt preexisting subscription services may engage in the activities set forth in 17 U.S.C. 114(d)(2).

(c) Upon compliance with 17 U.S.C. 112(e) and the terms and rates of this part, nonexempt preexisting subscription services may engage in the activities set forth in 17 U.S.C. 112(e) without limit to the number of ephemeral phonorecords made.

(d) For purposes of this part, Licensee means any preexisting subscription service as defined in 17 U.S.C. 114(j)(11).

[1] The Notice also commenced and requested Petitions to Participate for the proceeding to determine rates and terms for preexisting satellite digital audio radio services (''SDARS''), as required under section 804(b)(3)(B). Unlike the preexisting subscription services, the SDARS did not reach a settlement regarding rates and terms governing their activities under sections 112 and 114 and proceeded to a full hearing before the Judges. Consequently, those rates and terms will be determined by the Judges and also will be contained in proposed Part 382. Today's notice of proposed rulemaking discusses only the preexisting subscription services.

§ 382.2 Royalty fees for the digital performance of sound recordings and the making of ephemeral phonorecords by preexisting subscription services.

(a) Commencing January 1, 2008, and continuing through December 31, 2011, a Licensee's monthly royalty fee for the public performance of sound recordings pursuant to 17 U.S.C. 114(d)(2) and the making of any number of ephemeral phonorecords to facilitate such performances pursuant to 17 U.S.C. 112(e) shall be 7.25% of such Licensee's monthly gross revenues resulting from residential services in the United States.

(b) Commencing January 1, 2012, and continuing through December 31, 2012, a Licensee's monthly royalty fee for the public performance of sound recordings pursuant to 17 U.S.C. 114(d)(2) and the making of any number of ephemeral phonorecords to facilitate such performances pursuant to 17 U.S.C. 112(e) shall be 7.5% of such Licensee's monthly gross revenues resulting from residential services in the United States.

(c) Each Licensee making digital performances of sound recordings pursuant to 17 U.S.C. 114(d)(2) and ephemeral phonorecords pursuant to 17 U.S.C. 112(e) shall make an advance payment of $100,000 per year, payable no later than January 20th of each year. The annual advance payment shall be nonrefundable, but the royalties due and payable for a given year or any month therein under paragraphs (a) and (b) of this section shall be recoupable against the annual advance payment for such year; Provided, however, that any unused annual advance payment for a given year shall not carry over into a subsequent year.

(d) A Licensee shall pay a late fee of 1.5% per month, or the highest lawful rate, whichever is lower, for any payment received after the due date. Late fees shall accrue from the due date until payment is received.

(e)(1) For purposes of this section, *gross revenues* shall mean all monies derived from the operation of the programming service of the Licensee and shall be comprised of the following:

(i) Monies received by Licensee from Licensee's carriers and directly from residential U.S. subscribers for Licensee's programming service;

(ii) Licensee's advertising revenues (as billed), or other monies received from sponsors, if any, less advertising agency commissions not to exceed 15% of those fees incurred to a recognized advertising agency not owned or controlled by Licensee;

(iii) Monies received for the provision of time on the programming service to any third party;

(iv) Monies received from the sale of time to providers of paid programming such as infomercials;

(v) Where merchandise, service, or anything of value is received by Licensee in lieu of cash consideration for the use of Licensee's programming service, the fair market value thereof or Licensee's prevailing published rate, whichever is less;

(vi) Monies or other consideration received by Licensee from Licensee's carriers, but not including monies received by Licensee's carriers from others and not accounted for by Licensee's carriers to Licensee, for the provision of hardware by anyone and used in connection with the programming service;

(vii) Monies or other consideration received for any references to or inclusion of any product or service on the programming service; and

(viii) Bad debts recovered regarding paragraphs (e)(1)(i) through (vii) of this section.

(2) Gross revenues shall include such payments as set forth in paragraphs (e)(1)(i) through (viii) of this section to which Licensee is entitled but which are paid to a parent, subsidiary, division, or affiliate of Licensee, in lieu of payment to Licensee but not including payments to Licensee's carriers for the programming service. Licensee shall be allowed a deduction from ''gross revenues'' as defined in paragraph (e)(1) of this section for affiliate revenue returned during the reporting period and for bad debts actually written off during reporting period.

(f) During any given payment period, the value of each performance of each digital sound recording shall be the same.

§ 382.3 Terms for making payment of royalty fees.

(a) *Payment to Collective.* All royalty payments shall be made to the Collective designated for the collection and distribution of royalties for the 2008–2012 time period, which shall be SoundExchange.

(b) *Timing of payment.* Payment shall be made on the forty-fifth day after the end of each month for that month, commencing with the month succeeding the month in which the royalty fees are set.

(c) *Distribution of royalties.* (1) The Collective shall promptly distribute royalties received from Licensees to copyright owners and performers, or their designated agents, that are entitled to such royalties. The Collective shall only be responsible for making distributions to those copyright owners, performers, or their designated agents who provide the Collective with such information as is necessary to identify the correct recipient. The Collective shall distribute royalties on a basis that values all performances by a Licensee equally based upon the information provided under the reports of use requirements for Licensees contained in § 370.2 of this chapter.

(2) If the Collective is unable to locate a copyright owner or performer entitled to a distribution of royalties under paragraph (c)(1) of this section within 3 years from the date of payment by a Licensee, such distribution may first be applied to the costs directly attributable to the administration of that distribution. The foregoing shall apply notwithstanding the common law or statutes of any State.

§ 382.4 Confidential information and statements of account.

(a) For purposes of this part, confidential information shall include statements of account and any information pertaining to the statements of account designated as confidential by the nonexempt preexisting subscription service filing the statement. Confidential information shall also include any information so designated in a confidentiality agreement which has been duly executed between a nonexempt preexisting subscription service and an interested party, or between one or more interested parties; Provided that all such information shall be made available, for the verification proceedings provided for in §§ 382.5 and 382.6.

(b) Nonexempt preexisting subscription services shall submit monthly statements of account on a form provided by the Collective and the monthly royalty payments.

(c) A statement of account shall include only such information as is necessary to verify the accompanying royalty payment. Additional information beyond that which is sufficient to verify the calculation of the royalty fees shall not be included on the statement of account.

(d) Access to the confidential information pertaining to the royalty payments shall be limited to:

(1) Those employees, agents, consultants and independent contractors of the Collective, subject to an appropriate confidentiality agreement, who are engaged in the collection and distribution of royalty payments hereunder and activities directly related hereto, who are not also employees or officers of a sound recording copyright owner or performing artist, and who, for the purpose of performing such duties

during the ordinary course of employment, require access to the records; and

(2) An independent and qualified auditor who is not an employee or officer of a sound recording copyright owner or performing artist, but is authorized to act on behalf of the interested copyright owners with respect to the verification of the royalty payments.

(3) Copyright owners and performers whose works have been used under the statutory licenses set forth in 17 U.S.C. 112(e) and 114(f) by the Licensee whose Confidential Information is being supplied, or agents thereof, subject to an appropriate confidentiality agreement, provided that the sole confidential information that may be shared pursuant to this paragraph (d)(3) are the monthly statements of accounts that accompany royalty payments.

(e) The Collective or any person identified in paragraph (d) of this section shall implement procedures to safeguard all confidential financial and business information, including, but not limited to royalty payments, submitted as part of the statements of account, using a reasonable standard of care, but no less than the same degree of security used to protect confidential financial and business information or similarly sensitive information belonging to the Collective or such person.

(f) Books and records relating to the payment of the license fees shall be kept in accordance with generally accepted accounting principles for a period of three years. These records shall include, but are not limited to, the statements of account, records documenting an interested party's share of the royalty fees, and the records pertaining to the administration of the collection process and the further distribution of the royalty fees to those interested parties entitled to receive such fees.

§ 382.5 Verification of statements of account.

(a) *General.* This section prescribes general rules pertaining to the verification of the statements of account by interested parties according to terms promulgated by the Copyright Royalty Board.

(b) *Frequency of verification.* Interested parties may conduct a single audit of a nonexempt preexisting subscription service during any given calendar year.

(c) *Notice of intent to audit.* Interested parties must submit a notice of intent to audit a particular service with the Copyright Royalty Board, which shall publish in the **Federal Register** a notice announcing the receipt of the notice of intent to audit within 30 days of the filing of the interested parties' notice. Such notification of intent to audit shall also be served at the same time on the party to be audited.

(d) *Retention of records.* The party requesting the verification procedure shall retain the report of the verification for a period of three years.

(e) *Acceptable verification procedure.* An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent auditor, shall serve as an acceptable verification procedure for all parties.

(f) *Costs of the verification procedure.* The interested parties requesting the verification procedure shall pay for the cost of the verification procedure, unless an independent auditor concludes that there was an underpayment of five (5) percent or more; in which case, the service which made the underpayment shall bear the costs of the verification procedure.

(g) *Interested parties.* For purposes of this section, interested parties are those copyright owners who are entitled to receive royalty fees pursuant to 17 U.S.C. 114(g), their designated agents, or the Collective.

§ 382.6 Verification of royalty payments.

(a) *General.* This section prescribes general rules pertaining to the verification of the payment of royalty fees to those parties entitled to receive such fees, according to terms promulgated by the Copyright Royalty Board.

(b) *Frequency of verification.* Interested parties may conduct a single audit of the Collective during any given calendar year.

(c) *Notice of intent to audit.* Interested parties must submit a notice of intent to audit the entity making the royalty payment with the Copyright Royalty Board, which shall publish in the **Federal Register** a notice announcing the receipt of the notice of intent to audit within 30 days of the filing of the interested parties' notice. Such notification of interest shall also be served at the same time on the party to be audited.

(d) *Retention of records.* The interested party requesting the verification procedure shall retain the report of the verification for a period of three years.

(e) *Acceptable verification procedure.* An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent auditor, shall serve as an acceptable verification procedure for all interested parties.

(f) *Costs of the verification procedure.* The interested parties requesting the verification procedure shall pay for the cost of the verification procedure, unless an independent auditor concludes that there was an underpayment of five (5) percent or more, in which case, the entity which made the underpayment shall bear the costs of the verification procedure.

(g) *Interested parties.* For purposes of this section, interested parties are those who are entitled to receive royalty payments pursuant to 17 U.S.C. 114(g)(2), or their designated agents.

§ 382.7 Unknown copyright owners.

If the Collective is unable to identify or locate a copyright owner or performer who is entitled to receive a royalty distribution under this part, the Collective shall retain the required payment in a segregated trust account for a period of 3 years from the date of distribution. No claim to such distribution shall be valid after the expiration of the 3-year period. After expiration of this period, the Collective may apply the unclaimed funds to offset any costs deductible under 17 U.S.C. 114(g)(3). The foregoing shall apply notwithstanding the common law or statutes of any State.

Dated: October 26, 2007.

James Scott Sledge,

Chief Copyright Royalty Judge.

[FR Doc. E7–21473 Filed 10–30–07; 8:45 am]

BILLING CODE 1410–72–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2007–0459; FRL–8487–7]

Revisions to the California State Implementation Plan, Great Basin Unified Air Pollution Control District and Mojave Desert Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Great Basin Unified Air Pollution Control District (GBUAPCD) and Mojave Desert Air Quality Management District (MDAQMD) portions of the California State Implementation Plan (SIP). Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), we are proposing to approve local rules that

concern particulate matter (PM–10) emissions from wood burning appliances and open outdoor burning.

DATES: Any comments on this proposal must arrive by *November 30, 2007*.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2007–0459, by one of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov*. Follow the on-line instructions.
- *E-mail: steckel.andrew@epa.gov.*
- *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or e-mail. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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.

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

FOR FURTHER INFORMATION CONTACT: Al Petersen, Permits Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4118, *petersen.alfred@epa.gov*.

SUPPLEMENTARY INFORMATION: This proposal addresses the approval of GBUAPCD Rules 405 and 431 and MDAQMD Rule 444. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe this SIP revision is not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: August 22, 2007.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. E7–21320 Filed 10–30–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2007–0227–200722(b); FRL–8488–4]

Approval and Promulgation of Implementation Plans; North Carolina: State Implementation Plan Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the State Implementation Plan (SIP) revisions submitted by the State of North Carolina, through the North Carolina Department of Environment and Natural Resources (NCDENR), on February 8, 2007. The submittal encompasses revisions to NCDENR regulations ''General Recordkeeping and Reporting Requirements,'' ''Bulk Gasoline Terminals,'' and ''Gasoline Truck Tanks and Vapor Collections.'' This action is being taken pursuant to section 110 of the Clean Air Act (CAA). The intended effect of these revisions is to clarify certain provisions and to ensure consistency with the requirements of the CAA. In the Final Rules Section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before November 30, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2007–0227, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: lakeman.sean@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* EPA–R04–OAR–2007–0227, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9043. Mr. Lakeman can also be reached via electronic mail at *lakeman.sean@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules Section of this **Federal Register**.

Dated: October 19, 2007.

Russell L. Wright, Jr.,

Acting Regional Administrator, Region 4.

[FR Doc. E7–21235 Filed 10–30–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R09–OAR–2007–0916; FRL–8489–5]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Control of Emissions From Existing Other Solid Waste Incinerator Units; Nevada

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a negative declaration submitted by the Nevada Division of Environmental Protection. The negative declaration certifies that other solid waste incinerator units, which are subject to the requirements of sections 111(d) and 129 of the Clean Air Act, do not exist within the agency's air pollution control jurisdiction.

DATES: Any comments on this proposal must arrive by *November 30, 2007.*

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2007–0916, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.
2. *E-mail: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or e-mail. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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.

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

FOR FURTHER INFORMATION CONTACT: Mae Wang, EPA Region IX, (415) 947–4124, *wang.mae@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses a Clean Air Act section 111(d)/129 negative declaration submitted by the Nevada Division of Environmental Protection certifying that other solid waste incinerator units do not exist within its air pollution control jurisdiction. This negative declaration was submitted on December 19, 2006. For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication. If no adverse comments are received in response to this action, no further activity will be contemplated. If adverse comments are received, then EPA will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

Dated: September 17, 2007.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. E7–21448 Filed 10–30–07; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket No. 07–198; FCC 07–169]

Review of the Commission's Program Access Rules and Examination of Programming Tying Arrangements

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks comment on revisions to the Commission's program access and retransmission consent rules and whether it may be appropriate to preclude the practice of programmers to tie desired programming with undesired programming. In the *NPRM,* the Commission also seeks comment on whether to revise its procedures for resolving program access complaints.

DATES: Comments for this proceeding are due on or before November 30, 2007; reply comments are due on or before December 17, 2007. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before December 31, 2007.

ADDRESSES: You may submit comments, identified by MB Docket No. 07–198, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Steven Broeckaert, *Steven.Broeckaert@fcc.gov*; David Konczal, *David.Konczal@fcc.gov*; or Katie Costello, *Katie.Costello@fcc.gov*; of the Media Bureau, Policy Division, (202) 418–2120. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact

Cathy Williams at 202–418–2918, or via the Internet at *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking* (*NPRM*), MB Docket No. 07–198, FCC 07–169, adopted on September 11, 2007, and released on October 1, 2007. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

In addition to filing comments with the Office of the Secretary, a copy of any comments on the Paperwork Reduction Act proposed information collection requirements contained herein should be submitted to Cathy Williams, Federal Communications Commission, 445 12th St., SW., Room 1–C823, Washington, DC 20554, or via the Internet at *PRA@fcc.gov*; and also to Nicholas A. Fraser of the Office of Management and Budget (OMB), via Internet at *Nicholas_A._Fraser@omb.eop.gov* or via fax at (202) 395–5167.

Initial Paperwork Reduction Act of 1995 Analysis

This document contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due December 31, 2007. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB control number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

OMB Number: 3060–0888.

Title: Section 76.7, Petition Procedures; § 76.9, Confidentiality Of Proprietary Information; § 76.61, Dispute Concerning Carriage; § 76.914, Revocation Of Certification; § 76.1003, Program Access Proceedings; § 76.1302, Carriage Agreement Proceedings; § 76.1513, Open Video Dispute Resolution.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 600.

Estimated Time per Response: 4 to 60 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Total Annual Burden: 19,200 hours.

Total Annual Costs: $240,000.

Nature of Response: Required to obtain or retain benefits.

Nature and Extent of Confidentiality: A party that wishes to have confidentiality for proprietary information with respect to a submission it is making to the Commission must file a petition pursuant to the pleading requirements in § 76.7 and use the method described in §§ 0.459 and 76.9 to demonstrate that confidentiality is warranted.

Privacy Act Impact Assessment: None.

Needs and Uses: On September 11, 2007, the Commission adopted a Report and Order and a Notice of Proposed Rulemaking *In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992—Development of Competition and Diversity in Video Programming Distribution: Section 628(c)(5) of the Communications Act: Sunset of Exclusive Contract Prohibition; Review of the Commission's Program Access Rules and Examination of Programming Tying Arrangements*, MB Docket Nos. 07–29, 07–198, FCC 07–169. Section 628 of the Communications Act proscribes a cable operator, a satellite cable programming vendor in which a cable operator has an attributable interest, or a satellite broadcast programming vendor from engaging in unfair methods of competition and deceptive practices and directs the Commission to, among other things, prescribe regulations to provide for an expedited Commission review of any complaints made under this section. Section 76.1003 contains the Commission's procedural rules for resolving these program access complaints. The new proposed rules to this information collection are 47 CFR 76.1003(e)(1) and 47 CFR 76.1003(j). Therefore, the rules for this information collection are as follows:

47 CFR 76.1003(e)(1) requires a cable operator, satellite cable programming vendor, or satellite broadcast programming vendor that expressly references and relies upon a document in asserting a defense to a program access complaint filed pursuant to § 76.1003 or in responding to a material allegation in a program access complaint filed pursuant to § 76.1003, to include such document or documents as part of the answer.

47 CFR 76.1003(j) states in addition to the general pleading and discovery rules contained in § 76.7 of this part, parties to a program access complaint may serve requests for discovery directly on opposing parties, and file a copy of the request with the Commission. The respondent shall have the opportunity to object to any request for documents that are not in its control or relevant to the dispute. Such request shall be heard, and determination made, by the Commission. Until the objection is ruled upon, the obligation to produce the disputed material is suspended. Any party who fails to timely provide discovery requested by the opposing party to which it has not raised an objection as described above, or who fails to respond to a Commission order

for discovery material, may be deemed in default and an order may be entered in accordance with the allegations contained in the complaint, or the complaint may be dismissed with prejudice. This proposed rule would add a new universe of filers to this information collection and OMB approval is needed.

47 CFR Section 76.7. Pleadings seeking to initiate FCC action must adhere to the requirements of § 76.6 (general pleading requirements) and § 76.7 (initiating pleading requirements). Section 76.7 is used for numerous types of petitions and special relief petitions, including general petitions seeking special relief, waivers, enforcement, show cause, forfeiture and declaratory ruling procedures.

47 CFR 76.9. A party that wishes to have confidentiality for proprietary information with respect to a submission it is making to the FCC must file a petition pursuant to the pleading requirements in § 76.7 and use the method described in §§ 0.459 and 76.9 to demonstrate that confidentiality is warranted. The petitions filed pursuant to this provision are contained in the existing information collection requirement and are not changed by the proposed rule changes.

47 CFR 76.61. Section 76.61(a) permits a local commercial television station or qualified low power television station that is denied carriage or channel positioning or repositioning in accordance with the must-carry rules by a cable operator to file a complaint with the FCC in accordance with the procedures set forth in § 76.7. Section 76.61(b) permits a qualified local noncommercial educational television station that believes a cable operator has failed to comply with the FCC's signal carriage or channel positioning requirements (§§ 76.56 through 76.57) to file a complaint with the FCC in accordance with the procedures set forth in § 76.7.

47 CFR 76.914. Section 76.914(c) permits a cable operator seeking revocation of a franchising authority's certification to file a petition with the FCC in accordance with the procedures set forth in § 76.7.

47 CFR 76.1003. Section 76.1003(a) permits any multichannel video programming distributor aggrieved by conduct that it believes constitutes a violation of the FCC's competitive access to cable programming rules to commence an adjudicatory proceeding at the FCC to obtain enforcement of the rules through the filing of a complaint, which must be filed and responded to in accordance with the procedures specified in § 76.7, except to the extent such procedures are modified by § 76.1003.

47 CFR 76.1302. Section 76.1302(a) permits any video programming vendor or multichannel video programming distributor aggrieved by conduct that it believes constitutes a violation of the FCC's regulation of carriage agreements to commence an adjudicatory proceeding at the FCC to obtain enforcement of the rules through the filing of a complaint, which must be filed and responded to in accordance with the procedures specified in § 76.7, except to the extent such procedures are modified by § 76.1302.

47 CFR 76.1513. Section 76.1513(a) permits any party aggrieved by conduct that it believes constitutes a violation of the FCC's regulations or in section 653 of the Communications Act (47 U.S.C. 573) to commence an adjudicatory proceeding at the Commission to obtain enforcement of the rules through the filing of a complaint, which must be filed and responded to in accordance with the procedures specified in § 76.7, except to the extent such procedures are modified by § 76.1513.

Summary of Notice of Proposed Rulemaking

I. Procedure for Shortening Term of Extension of Exclusive Contract Prohibition

1. In light of the five-year extension of the exclusivity ban in § 76.1002(c)(6) adopted in the *Report and Order* in MB Docket No. 07–29 on September 11, 2007 (72 FR 56645, October 4, 2007), the Commission seeks comment on whether it can establish a procedure that would shorten the term of the extension if, after two years (*i.e.*, October 5, 2009) a cable operator can show competition from new entrant MVPDs has reached a certain penetration level in the DMA. We seek comment on what this penetration level should be. And, we seek comment on whether two years or some other time frame is the appropriate period of time. Finally, we ask parties to comment on whether a market-by-market analysis is appropriate as both a legal and policy matter.

II. Extending Program Access Rules to Terrestrially Delivered Cable-Affiliated Programming

2. In comments on the *Notice of Proposed Rulemaking* in MB Docket No. 07–29 (72 FR 9289, March 1, 2007), competitive MVPDs provided various examples of withholding of terrestrially delivered cable-affiliated programming. Moreover, in the *Report and Order*, we note the Commission's previous findings that in two instances—Philadelphia and San Diego—withholding of terrestrially delivered cable-affiliated programming has had a material adverse impact on competition in the video distribution market. As discussed in the *Report and Order*, however, the Commission has previously concluded that terrestrially delivered programming is ''outside of the direct coverage'' of the exclusive contract prohibition in section 628(c)(2)(D). In the *Report and Order*, we state our continued view that the plain language of the definitions of ''satellite cable programming'' and ''satellite broadcast programming'' as well as the legislative history of the 1992 Cable Act place terrestrially delivered programming beyond the scope of section 628(c)(2)(D). Commenters, however, cite various other provisions of the Communications Act as providing the Commission with statutory authority to extend the program access rules, including an exclusive contract prohibition, to terrestrially delivered cable-affiliated programming, such as sections 4(i), 201(b), 303(r), 601(6), 612(g), 616(a), 628(b), and 706.

3. As demonstrated by the examples of withholding of regional sports networks (RSNs) in San Diego and Philadelphia, we believe that withholding of terrestrially delivered cable-affiliated programming is a significant concern that can adversely impact competition in the video distribution market. To address this concern, we seek comment on whether it would be appropriate to extend our program access rules to all terrestrially delivered cable-affiliated programming pursuant to sections 4(i), 201(b), 303(r), 601(6), 612(g), 616(a), 628(b), or 706, or any other provision under the Communications Act. *See* 47 U.S.C. 154(i); 47 U.S.C. 201(b); 47 U.S.C. 303(r); 47 U.S.C. 521(6); 47 U.S.C. 532(g); 47 U.S.C. 536(a); 47 U.S.C. 548(b); 47 U.S.C. 157 nt. In particular, we note our previous conclusion that the ability to offer a viable video service is ''linked intrinsically'' to broadband deployment. *See Local Franchising Report and Order,* 72 FR 13189, March 21, 2007. We seek comment on whether the ability to offer terrestrially delivered cable-affiliated programming is needed to offer a viable video service and, accordingly, whether extending the program access rules, including the prohibition on exclusive contracts, to terrestrially delivered cable-affiliated programming would promote the goal of section 706 to facilitate broadband deployment. In addition, we note that the plain language of section 628(b), like

section 628(c)(2)(D), specifies ''satellite cable programming'' and ''satellite broadcast programming.'' *See* 47 U.S.C. 548(b); 548(c)(2)(D). We seek comment regarding whether we have the authority to extend our program access rules to all terrestrially delivered cable-affiliated programming by way of statutory provisions granting general authority to the Commission, in light of the specific authority in section 628 that limits their scope to satellite programming.

4. We also seek comment on the extent to which cable operators are shifting delivery of affiliated programming from satellite delivery to terrestrial delivery and whether such action is intended to evade the program access rules. We note Verizon's claim that Cablevision's programming subsidiary, Rainbow, has made standard definition feeds of its RSNs available by satellite, but High Definition (HD) feeds available terrestrially, thereby avoiding the program access rules, including the exclusive contract prohibition, for HD feeds. We seek comment on whether the program access rules should apply to all feeds of the same programming, including both standard and HD feeds, regardless of whether one feed is delivered terrestrially. We also seek comment on whether shifting the HD feed of vertically integrated cable programming to terrestrial delivery is an unfair method of competition or an unfair or deceptive act in violation of section 628(b) of the Communications Act. 47 U.S.C. 548(b). The Commission has stated ''there may be circumstances where moving programming from satellite to terrestrial delivery could be cognizable under section 628(b) as an unfair method of competition or deceptive practice if it precluded competitive MVPDs from providing satellite cable programming.''

III. Expanding the Exclusive Contract Prohibition to Non-Cable-Affiliated Programming

5. We also seek comment on whether to expand the exclusive contract prohibition to apply to non-cable-affiliated programming that is affiliated with a different MVPD, principally a DBS provider. As discussed above, to the extent that an MVPD meets the definition of a ''cable operator'' under the Communications Act, the exclusive contract prohibition in section 628(c)(2)(D) already applies to its affiliated programming. Moreover, as noted above, section 628(j) of the Communications Act provides that any provision of section 628, including the exclusive contract prohibition in section 628(c)(2)(D), that applies to a cable operator also applies to any common carrier or its affiliate that provides video programming. 47 U.S.C. 548(j). Programming affiliated with other MVPDs, such as DBS providers, is beyond the scope of the exclusive contract prohibition in section 628(c)(2)(D). We seek comment on whether to extend the exclusive contract prohibition to non-cable-affiliated programming that is affiliated with a different MVPD, principally a DBS provider, pursuant to sections 4(i), 201(b), 303(r), 601(6), 612(g), 616(a), 628(b), or 706, or any other provision under the Communications Act.

IV. Tying of Desired Programming With Undesired Programming

6. Small and rural cable operators and other MVPDs have raised concerns regarding tying of MVPDs' rights to carry broadcast stations with carriage of other owned or affiliated broadcast stations in the same or a distant market or one or more affiliated non-broadcast network. For example, in 2002, the American Cable Association (ACA), representing small cable operators, filed a Petition for Inquiry stating that broadcast networks and station groups engage in unfair retransmission tying arrangements. *See* American Cable Association's Petition for Inquiry into Retransmission Consent Practices (filed October 1, 2002) (*ACA 2002 Petition*). ACA explains that tying harms small cable operators and their consumers by increasing the costs of basic cable and reducing program choices. Small and rural cable operators and other MVPDs, in addition to recent program access complainants, have also raised concerns regarding the practice of programmers to tie marquee programming, such as premium channels or regional sports programming, with unwanted, or less desirable, programming. For example, in their comments on the *Notice of Proposed Rulemaking* in MB Docket No. 07–29, OPASTCO/ITAA, representing small and rural MVPDs, cites the practice of programmers to require carriage of less popular programming in specified (usually basic) tiers in return for the right to carry popular programming as an onerous and unreasonable condition that denies consumers choice and impedes entry into the MVPD market.

7. When programming is available for purchase only through programmer-controlled packages that include both desired and undesired programming, MVPDs face two choices. First, the MVPD can refuse the tying arrangement, thereby potentially depriving itself of desired, and often economically vital, programming that subscribers demand and which may be essential to attracting and retaining subscribers. Second, the MVPD can agree to the tying arrangement, thereby incurring costs for programming that its subscribers do not demand and may not want, with such costs being passed on to subscribers in the form of higher rates, and also forcing the MVPD to allocate channel capacity for the unwanted programming in place of programming that its subscribers prefer. In either case, the MVPD and its subscribers are harmed by the refusal of the programmer to offer each of its programming services on a stand-alone basis. We note that the competitive harm and adverse impact on consumers would be the same regardless of whether the programmer is affiliated with a cable operator or a broadcaster or is affiliated with neither a cable operator nor a broadcaster, such as networks affiliated with a non-cable MVPD or a non-affiliated independent network. Moreover, we note that small cable operators and MVPDs are particularly vulnerable to such tying arrangements because they do not have leverage in negotiations for programming due to their smaller subscriber bases. As discussed in more detail below, we seek comment on these various types of tying arrangements. Given the problems associated with such tying arrangements, we seek comment on whether it may be appropriate for the Commission to preclude them. We also seek comment on the extent to which these disparities in bargaining power are the result of media consolidation, and, if so, what steps the Commission can and should take to redress the imbalance.

8. *Tying of Broadcast Programming.* We seek comment on the tying of MVPDs' rights to carry broadcast stations with carriage of other owned or affiliated broadcast stations in the same or a distant market or one or more affiliated non-broadcast networks. Section 325(b)(3)(C) of the Communications Act obligates broadcasters and multichannel video programming distributors to negotiate retransmission consent agreements in good faith. 47 U.S.C. 325(b)(3)(C). Specifically, the Commission must establish regulations that:

> Until January 1, 2010, prohibit a television broadcast station that provides retransmission consent from engaging in exclusive contracts for carriage or failing to negotiate in good faith, and it shall not be a failure to negotiate in good faith if the television broadcast station enters into retransmission consent agreements containing different terms and conditions, including price terms, with different multichannel video programming distributors if such different terms and

conditions are based on competitive marketplace considerations. 47 U.S.C. 325(b)(3)(C)(ii).

Pursuant to the Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA), Congress extended 47 U.S.C. 325(b)(3)(C) until 2010 and amended that section to impose a reciprocal good faith retransmission consent bargaining obligation on MVPDs. The Commission adopted rules implementing section 207 of SHVERA. *See Reciprocal Bargaining Order,* 70 FR 40216, July 13, 2005.

9. In its *Good Faith Order,* the Commission adopted rules implementing the good faith negotiation provisions and the complaint procedures for alleged rule violations. *See Good Faith Order,* 68 FR 52127, September 2, 2003. The *Good Faith Order* adopted a two-part test for good faith. The first part of the test consists of a brief, objective list of negotiations standards. First, a broadcaster may not refuse to negotiate with an MVPD regarding retransmission consent. Second, a broadcaster must appoint a negotiating representative with authority to bargain on retransmission consent issues. Third, a broadcaster must agree to meet at reasonable times and locations and cannot act in a manner that would unduly delay the course of negotiations. Fourth, a broadcaster may not put forth a single, unilateral proposal. Fifth, a broadcaster, in responding to an offer proposed by an MVPD, must provide considered reasons for rejecting any aspects of the MVPD's offer. Sixth, a broadcaster is prohibited from entering into an agreement with any party conditioned upon denying retransmission consent to any MVPD. Finally, a broadcaster must agree to execute a written retransmission consent agreement that sets forth the full agreement between the broadcaster and the MVPD. The second part of the good faith test is based on a totality of the circumstances standard.

10. The Commission has held that ''[r]efusal by a Negotiating Entity to put forth more than a single, unilateral proposal'' is a *per se* violation of a broadcast licensee's good faith obligation. *See* 47 CFR 76.65(b)(1)(iv). The Commission has also indicated that such requirement is not limited to monetary considerations, but also applies to situations where a broadcaster is unyielding in its insistence upon carriage of a secondary programming service undesired by the cable operator as a condition of granting its retransmission consent:

''Take it or leave it'' bargaining is not consistent with an affirmative obligation to negotiate in good faith. For example, a broadcaster might initially propose that, in exchange for carriage of its signal, an MVPD carry a cable channel owned by, or affiliated with, the broadcaster. The MVPD might reject such offer on the reasonable grounds that it has no vacant channel capacity and request to compensate the broadcaster in some other way. Good faith negotiation requires that the broadcaster at least consider some form of consideration other than carriage of affiliated programming. This standard does not, in any way, require a broadcaster to reduce the amount of consideration it desires for carriage of its signal. This standard only requires that the broadcaster be open to discussing more than one form of consideration in seeking compensation for retransmission of its signal by MVPDs.

11. As discussed above, ACA in 2002 filed a Petition for Inquiry regarding the Commission's retransmission consent rules. *See ACA 2002 Petition.* This petition will be placed in the record of this proceeding. ACA's Petition raises concerns about broadcasters' alleged abuse of the retransmission consent process. ACA asserts that broadcast networks and station groups engage in unfair retransmission tying arrangements. ACA asserts that small cable operators have minimal bargaining power during negotiations and are targets for abuse because of their lack of resources to file complaints and engage in disputes. We note that its *Retransmission Consent and Exclusivity Rules: Report to Congress Pursuant to Section 208 of the Satellite Home Viewer Extension and Reauthorization Act of 2004* (September 8, 2005) (available at *http://www.fcc.gov/mb/policy/shvera.html*), the Commission addressed the tying issue. The Commission noted ''cable operators' widespread concern that retransmission consent negotiations frequently involve broadcasters tying carriage of their signals to numerous affiliated non-broadcast programming networks.'' The Report noted that ''since the Commission's decision to deny broadcasters the ability to assert dual and multicast must carry, broadcasters have begun using their retransmission consent negotiations to negotiate carriage of their digital signals, thus furthering the digital transition by increasing the number of households with access to digital signals. If broadcasters are limited in their ability to accept in-kind compensation, they should be granted full carriage rights for digital signals, including all free over-the-air digital multicast streams. Should Congress consider proposals circumscribing retransmission consent compensation, we encouraged review of related rules and policies to maintain proper balance.''

12. We seek comment on the current status of carriage negotiations in today's marketplace. We seek comment on whether broadcasters are tying carriage of their broadcast signals to carriage of other owned or affiliated broadcast stations in the same or a distant market or one or more affiliated non-broadcast networks and, if so, how retransmission consent negotiations are impacted. We ask if broadcast networks and station groups engage in retransmission consent tying arrangements that result in harm to small cable operators and their customers. We ask if the Commission's good faith negotiation regulations provide enough protection for small cable operators and small broadcasters in the negotiation process, taking into account the administrative burdens and costs of engaging in a contested case before the Commission. We seek comment on whether and how the Commission's good faith negotiation regulations should be modified to address these concerns. Also, we ask what the effect of any modifications would be on the economic underpinnings of broadcast-affiliated programmers.

13. We also seek comment on whether the Commission has the jurisdiction to preclude tying arrangements by broadcasters, without modification of the retransmission consent regime by Congress. The legislative history of section 325 addresses the right of broadcasters to seek carriage of additional channels as part of retransmission consent transactions: ''Other broadcasters may not seek monetary compensation, but instead negotiate other issues with cable systems, such as joint marketing efforts, the opportunity to provide news inserts on cable channels, or the right to program an additional channel on a cable system. It is the Committee's intention to establish a marketplace for the disposition of the rights to retransmit broadcast signals; it is not the Committee's intention in this bill to dictate the outcome of the ensuing marketplace negotiations.'' Congress appeared to contemplate carriage of broadcast-affiliated cable channels as part of legitimate retransmission consent negotiations.

14. In addition, we seek comment regarding whether there are grounds for the Commission to depart from prior holdings that permitted broadcasters to negotiate the carriage of affiliated channels as part of retransmission consent negotiations. The Commission has stated that examples of bargaining proposals ''presumptively * * * consistent with competitive marketplace considerations and the good faith

negotiation requirement'' include ''proposals for carriage conditioned on carriage of any other programming, such as a broadcaster's digital signals, an affiliated cable programming service, or another broadcast station either in the same or a different market.'' *See Implementation of the Satellite Home Viewer Improvement Act of 1999,* 65 FR 15559, March 23, 2000. We held that such a proposal contains ''presumptively legitimate terms and conditions or forms of consideration'' and found nothing to suggest that such a request is ''impermissible'' or anything ''other than a competitive marketplace consideration.'' In 2001, the Commission considered but refused to adopt rules specifically prohibiting tying arrangements. *See Carriage of Digital Television Broadcast Signals,* 66 FR 16533, March 26, 2001. The Commission concluded that such arrangements are permitted, but stated it would continue to monitor the situation with respect to potential anticompetitive conduct by broadcasters. We seek comment on whether market circumstances and industry practices have changed to warrant a different conclusion.

15. Lastly, we ask whether Commission action to preclude tying arrangements is consistent with the First Amendment. On the one hand, it could be argued that restricting such arrangements infringes the right of broadcasters to express a message by packaging together certain content. On the other hand, we note that the Supreme Court has observed that ''the programming offered on various channels'' by video distributors consists of ''individual, unrelated segments that happen to be transmitted together for individual selection by members of the audience.'' Unlike newspapers and magazines, the Court suggested that these segments do not ''contribute something to a common theme'' expressed by the distributor to its subscribers.

16. *Tying of Satellite Cable Programming.* Small and rural MVPDs as well as program access complainants have asserted that tying practices by satellite cable programmers constitute ''unfair methods of competition or unfair or deceptive acts or practices, the purpose or effect of which is to hinder significantly or to prevent any [MVPD] from providing satellite cable programming * * * to subscribers or consumers'' in violation of section 628(b) of the Communications Act. 47 U.S.C. 548(b). At the time of the *First Report and Order,* 58 FR 27658, May 11, 1993, the Commission declined to adopt specific rules under section 628(b) to address tying, while clearly reserving the right to do so if necessary:

> Neither the record of this proceeding nor the legislative history offer much insight into the types of practices that might constitute a violation of the statute with respect to the unspecified ''unfair practices'' prohibited by section 628(b) * * * The objectives of the provision, however, are clearly to provide a mechanism for addressing those types of conduct, primarily associated with horizontal and vertical concentration within the cable and satellite cable programming field, that inhibit the development of multichannel video distribution competition.
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> Thus, although the types of conduct more specifically referenced in the statute, *i.e.*, exclusive contracting, undue influence among affiliates, and discriminatory sales practices, appear to be the primary areas of congressional concern, section 628(b) is a clear repository of Commission jurisdiction to adopt additional rules or to take additional actions to accomplish the statutory objectives should additional types of conduct emerge as barriers to competition and obstacles to broader distribution of satellite cable * * * programming.

17. We seek comment on the current status of carriage negotiations in today's marketplace. We seek comment on whether satellite cable programmers are tying carriage of their desirable channels to carriage of other less desirable owned or affiliated channels. We ask whether and how such tying arrangements affect small cable operators and their customers. We seek comment on whether ''take-it-or-leave-it'' tying arrangements (*i.e.*, where the purchase of desired programming is conditioned on the purchase of undesired programming) without any alternative offer to provide the programming on a stand-alone basis are prevalent in the industry; and if so, whether such an arrangement is a violation of section 628(b). As discussed above, in such situations, MVPDs are victims of an unfair method of competition that hinders significantly or prevents MVPDs from providing satellite cable programming to subscribers.

18. We also seek comment on whether the Commission has the jurisdiction to preclude tying arrangements by satellite cable programmers under section 628(b) or any other statutory authority. We seek comment on whether section 628(b) requires satellite cable programmers to offer each of their programming services on a stand-alone basis to all MVPDs at reasonable rates, terms, and conditions. Moreover, to the extent that we decide in this proceeding to extend the Commission's program access rules to terrestrially delivered cable-affiliated programming networks, we seek comment on whether we should also require terrestrially delivered cable-affiliated programming networks to be offered on a stand-alone basis to all MVPDs at reasonable rates, terms, and conditions. Lastly, we ask whether Commission action to preclude tying arrangements by satellite cable programmers is consistent with the First Amendment.

19. *Tying of Other Programming.* We also seek comment on whether we have the jurisdiction or authority to require networks that are affiliated with neither a cable operator nor a broadcaster, such as networks affiliated with a non-cable MVPD or a non-affiliated independent network, to be offered on a stand-alone basis to all MVPDs at reasonable rates, terms, and conditions. We seek comment on the extent to which such programming networks have engaged in unfair tying practices or other abusive practices that would require regulatory intervention. We seek comment on whether it would be appropriate to regulate these programming networks in such a manner pursuant to sections 4(i), 201(b), 303(r), 601(6), 612(g), 616(a), and 706, or any other provision under the Communications Act.

V. Program Access Concerns Raised by Small and Rural MVPDs

20. As discussed above, small and rural MVPDs raise additional issues in their comments regarding obstacles they face in trying to obtain access to programming. They ask the Commission to examine various conditions they describe as onerous and unreasonable, which they allege are imposed by programmers on small and rural MVPDs for access to content, including restrictions on the use of shared headends for receiving content. NTCA and OPASTCO/ITTA claim that use of a shared headend is an economical means for multiple rural MVPDs to provide video service in a high-cost area, but that programmers have expressed concern with the potential for the use of shared headends to result in unauthorized reception of programming. NTCA states that while shared headend providers are currently negotiating with content providers to resolve these issues, it is concerned that rural consumers served by shared headends may lose access to programming if these negotiations fail. In addition to the issue of shared headends, small and rural MVPDs ask the Commission to examine other conditions imposed by programmers, including (i) requiring MVPDs to enter into mandatory non-disclosure agreements with programmers, which prevents small and rural MVPDs from obtaining information about the market value of

programming; (ii) requiring small and rural MVPDs to provide programmers with ''hundreds of advertising slots''; and (iii) mandating unwarranted security requirements that extend beyond the legitimate need to protect programming. OPASTCO/ITTA claim that all of these conditions impede the entry of small and rural telephone companies into the video distribution marketplace. We seek comment on the extent to which such practices are occurring in the marketplace and, if so, whether we should, and whether we have the authority to, take action to address these practices.

VI. Modification of Program Access Complaint Procedures

21. *Remedies for Violations.* We seek comment on whether to add an arbitration-type step as part of the Commission's determination of an appropriate remedy for program access violations. We agree with commenters that commercial arbitration requires parties to put forth their best effort to resolve disputes or risk the arbitrator adopting the opposing parties' proposals. In the *Hughes Order,* the Commission concluded that final offer arbitration has the attractive ''ability to induce two sides to reach their own agreement, lest they risk the possibility that a relatively extreme offer of the other side may be selected by the arbitrator.'' This type of pressure can encourage the parties to resolve their differences through settlement. We believe that a modified version of this method can encourage negotiation among the parties. Therefore, we seek comment on whether, when feasible, the Commission should request, as part of its evaluation of the appropriate remedy to impose for program access violations, that the parties each submit their best ''final offer'' proposal for the rates, terms, or conditions under review. We seek comment on whether the Commission should have the discretion to adopt one of the parties' proposals as the remedy for the program access complaint.

22. *Status of Existing Contract Pending Resolution of Program Access Complaint.* While we declined to adopt mandatory arbitration in lieu of the Commission's complaint process in the *Report and Order,* we issue this *NPRM* on the issue of a provision for complainants to request a stay of any action or proposed action that would change an existing program contract that is the subject of a program access complaint, pending the resolution of the program access complaint. Some competitive providers recommend a ''standstill'' requirement for pre-existing carriage contracts during adjudication of program access disputes, to preserve the *status quo* until the program access complaint has been resolved. In a recent merger transaction, in adopting conditions for arbitration of program access disputes, the Commission required that an aggrieved MVPD have continued access to the programming in question under the terms and conditions of the expired contract, pending resolution of the dispute. Provision of the disputed programming during the pendency of arbitration was not required in the case of the first time requests for programming where no carriage agreement had previously existed between the parties. Verizon supports a five-month long standstill provision while complaints are being resolved. BSPA, RCN, and USTelecom support a standstill provision pending the resolution of the complaint, wherein carriage is continued and the parties are subject to the same price, terms, and conditions of the existing contract, with any new price arising out of resolution to be applied retroactively to the date of the complaint. BSPA asserts that vertically integrated programmers covered by the program access rules have incentives to use temporary foreclosure strategies during negotiations for programming and, therefore, standstill agreements should be made part of the program access complaint procedures. Other parties favoring a standstill provision include ACA, EchoStar, and SureWest. EchoStar asserts that there can be no doubt that the Commission has the authority to promulgate a standstill requirement as a lesser interim remedy where interruption of carriage threatens to cause irreparable injury to the public.

23. NCTA opposes any ''standstill'' provision and states that there is no authority that allows the Commission to interfere in the right to contract in this way. Time Warner asserts that the standstill requirement would prohibit a network from de-authorizing carriage by an MVPD, but would allow the MVPD to drop the network, creating an unfair bargaining situation. Time Warner believes that any standstill requirement would increase the likelihood of program access complaints because the MVPD will have a strong incentive to file a complaint just to protect the *status quo* and decrease the chances that parties will resolve their disputes because the incentive of either party to negotiate could be reduced once the *status quo* is protected. Comcast and the Broadcast Networks also oppose any ''standstill'' requirement.

24. We agree that the threat of temporary foreclosure pending resolution of a complaint may impair settlement negotiations and may discourage parties from filing legitimate complaints. In the *Adelphia Order,* the Commission discussed circumstances wherein temporary foreclosure of programming service may be profitable even where permanent foreclosure is not. By temporarily foreclosing supply of the programming to an MVPD competitor or by threatening to engage in temporary foreclosure, the integrated firm may improve its bargaining position so as to be able to extract a higher price from the MVPD competitor than it could have negotiated if it were a non-integrated programming supplier. The Commission included, as a measure to alleviate such foreclosure strategies, a requirement that, upon receiving timely notice of an MVPD's intent to arbitrate, program carriage be continued under the existing terms and conditions. We request comment on whether the issuance of temporary stay orders would encourage parties to resolve program access disputes and to make use of the Commission's complaint procedures when needed. We request comment on whether complainants must formally request such relief from the Commission and must establish that they are likely to prevail on the merits of their complaint; will suffer irreparable harm absent a stay; that the balance of harms to the parties favors grant of a stay; and that the public interest favors grant of the stay. We request comment on whether, as part of a showing of irreparable harm, complainants may discuss the likelihood that subscribers would switch MVPDs to obtain the programming in dispute for a long enough period to make the strategy profitable to the respondent. We request comment on whether these stays should be routinely granted when the facts support their issuance and that they will help to encourage settlement negotiations. We request comment on the nature of the stay, that is, whether both the complainant and the respondent will be subject to the stay order, and required to fulfill their respective obligations under the terms and conditions of the carriage contract in issue, while the stay is in effect. We request comment on whether complainants will be permitted to drop the programming that is the subject of the program access dispute unless and until a request to dismiss the complaint with prejudice is granted by the Commission. We request comment on whether the length of the stay should be entirely discretionary. Finally, we request comment on whether the Commission should include, as part of

its final order resolving the complaint or resolving damages, adjustments to its remedies that make the terms of the new agreement between the parties retroactive to the expiration date of the previous agreement.

VII. Procedural Matters

A. Ex Parte Rules

25. *Permit-But-Disclose.* The *NPRM* in this proceeding will be treated as ''permit-but-disclose'' subject to the ''permit-but-disclose'' requirements under § 1.1206(b) of the Commission's rules. *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required. Additional rules pertaining to oral and written presentations are set forth in § 1.1206(b).

B. Filing Requirements

26. *Comment Information.* Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121, May 1, 1998.

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the website for submitting comments.
- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov,* and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

27. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. Persons with disabilities who need assistance in the FCC Reference Center may contact Bill Cline at (202) 418–0267 (voice), (202) 418–7365 (TTY), or *bill.cline@fcc.gov.* These documents also will be available from the Commission's Electronic Comment Filing System. Documents are available electronically in ASCII, Word 97, and Adobe Acrobat. Copies of filings in this proceeding may be obtained from Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554; they can also be reached by telephone, at (202) 488–5300 or (800) 378–3160; by e-mail at *fcc@bcpiweb.com;* or via their Web site at *http://www.bcpiweb.com.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0531 (voice), (202) 418–7365 (TTY).

C. Initial Paperwork Reduction Act of 1995 Analysis

28. The *NPRM* has been analyzed with respect to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, and contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the proposed information collection requirements contained in this *NPRM,* as required by the PRA.

29. Written comments on the PRA proposed information collection requirements must be submitted by the public, the OMB, and other interested parties on or before December 31, 2007. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' In addition to filing comments with the Office of the Secretary, a copy of any comments on the proposed information collection requirements contained herein should be submitted to Cathy Williams, Federal Communications Commission, 445 12th St., SW., Room 1–C823, Washington, DC 20554, or via the Internet at *PRA@fcc.gov*; and also to Nicholas A. Fraser of the Office of Management and Budget (OMB), via Internet at

Nicholas_A._Fraser@omb.eop.gov or via fax at (202) 395–5167.

30. *Further Information.* For additional information concerning the PRA proposed information collection requirements contained in this NPRM, contact Cathy Williams at 202–418–2918, or via the Internet at *PRA@fcc.gov.*

D. Initial Regulatory Flexibility Analysis

31. As required by the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities of the proposals addressed in this *NPRM.* Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the *NPRM.* Comments must be identified as responses to the IRFA. The Commission will send a copy of the *NPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

Need for, and Objectives of, the Proposed Rules

32. *Overview.* The *NPRM* considers Commission action with respect to seven issues. First, the Commission is considering whether it can establish a procedure that would shorten the term of the five-year extension of the exclusive contract prohibition if, after two years (*i.e.*, October 5, 2009) a cable operator can show competition from new entrant MVPDs has reached a certain penetration level in a Designated Market Area. Second, the Commission is contemplating the extension of its program access rules to terrestrially delivered cable-affiliated programmers in order to facilitate competition in the video distribution market. Third, the Commission is considering whether to expand the exclusive contract prohibition to apply to non-cable-affiliated programming that is affiliated with a different MVPD, principally a Direct Broadcast Satellite (DBS) provider. Fourth, the *NPRM* is contemplating whether it may be appropriate for the Commission to preclude the practice of programmers to require multichannel video programming distributors (MVPDs) to purchase and carry undesired programming in return for the ability to purchase and carry desired programming. The *NPRM* considers whether to instead require programmers to offer each of their programming services on a stand-alone basis to all MVPDs. Fifth, the *NPRM* contemplates action to address concerns raised by small and rural MVPDs regarding conditions imposed by programmers for access to content. The *NPRM* also contemplates revising the Commission's program access complaint procedures in two respects. First, the *NPRM* is considering whether to establish a process whereby a program access complainant may seek a temporary stay of any proposed changes to its existing programming contract pending resolution of a complaint. Second, the *NPRM* contemplates revising the Commission's program access complaint procedures by requiring parties to submit to the Commission, when requested, ''final offer'' proposals as part of the remedy phase of the complaint process. Each of these issues is discussed in further detail below.

33. *Procedure for Shortening Term of Extension of Exclusive Contract Prohibition.* Section 628(c)(2)(D) of the Communications Act prohibits, in areas served by a cable operator, exclusive contracts for satellite cable programming or satellite broadcast programming between vertically integrated programming vendors and cable operators unless the Commission determines that such exclusivity is in the public interest. *See* 47 U.S.C. 548(c)(2)(D). In MB Docket 07–29, the Commission decided to extend this prohibition for five years, until October 5, 2012. In light of the five-year extension of the exclusivity ban, the *NPRM* considers whether it can establish a procedure that would shorten the term of the extension if, after two years (*i.e.*, October 5, 2009), a cable operator can show competition from new entrant MVPDs has reached a certain penetration level in the DMA. The *NPRM* contemplates what this penetration level should be, whether two years or some other time frame is the appropriate period of time, and whether a market-by-market analysis is appropriate as both a legal and policy matter.

34. *Terrestrially Delivered Cable-Affiliated Programming.* Congress enacted the program access provisions contained in section 628 of the Communications Act of 1934, as amended, as part of the Cable Television Consumer Protection and Competition Act of 1992 (1992 Act). The program access provisions are intended to increase competition and diversity in the multichannel video programming market, as well as to foster the development of competition to traditional cable systems, by prescribing regulations that govern the access by competing MVPDs to ''satellite cable programming'' and ''satellite broadcast programming.'' The term ''satellite cable programming'' means ''video programming which is transmitted via satellite and which is primarily intended for direct receipt by cable operators for their retransmission to cable subscribers,'' except that such term does not include satellite broadcast programming. 47 U.S.C. 548(i)(1); 47 U.S.C. 605(d)(1); *see also* 47 CFR 76.1000(h). The term ''satellite broadcast programming'' means ''broadcast video programming when such programming is retransmitted by satellite and the entity retransmitting such programming is not the broadcaster or an entity performing such retransmission on behalf of and with the specific consent of the broadcaster.'' 47 U.S.C. 548(i)(3); *see also* CFR 76.1000(f). The Commission has previously concluded that terrestrially delivered programming (*i.e.*, programming transmitted or retransmitted by satellite for direct reception by cable operators) is not covered by the definitions of ''satellite cable programming'' and ''satellite broadcast programming.'' *See 2002 Extension Order,* 67 FR 49247, July 30, 2002. Thus, terrestrially delivered programming is not subject to the program access provisions. The Commission has previously found that cable operators have withheld terrestrially delivered cable-affiliated programming from competitive MVPDs and that this has resulted in a material adverse impact on competition in the video distribution market. *See Adelphia Order,* 21 FCC Rcd 8203. To remedy this concern, the *NPRM* considers whether to extend the program access provisions to all terrestrially delivered cable-affiliated programming pursuant to various provisions of the Communications Act, such as sections 4(i), 201(b), 303(r), 601(6), 612(g), 616(a), 628(b), and 706. The Commission also seeks information as to whether cable operators, again with anti-competitive results, are shifting delivery of affiliated programming from satellite delivery to terrestrial delivery and whether such action is intended to evade the program access rules.

35. *Expanding the Exclusive Contract Prohibition to Non-Cable-Affiliated Programming.* The *NPRM* is considering whether to expand the exclusive contract prohibition to apply to non-cable-affiliated programming that is affiliated with a different MVPD, principally a DBS provider. To the extent that an MVPD meets the definition of a ''cable operator'' under the Communications Act, the exclusive contract prohibition in section

628(c)(2)(D) already applies to its affiliated programming. Moreover, section 628(j) of the Communications Act provides that any provision of section 628, including the exclusive contract prohibition in section 628(c)(2)(D), that applies to a cable operator also applies to any common carrier or its affiliate that provides video programming. *See* 47 U.S.C. 548(j). Programming affiliated with other MVPDs, such as DBS providers, is beyond the scope of the exclusive contract prohibition in section 628(c)(2)(D). The *NPRM* is considering whether to extend the exclusive contract prohibition to non-cable-affiliated programming that is affiliated with a different MVPD, principally a DBS provider, pursuant to sections 4(i), 201(b), 303(r), 601(6), 612(g), 616(a), 628(b), or 706, or any other provision under the Communications Act.

36. *Tying.* Various MVPDs have raised concerns regarding the practice of some programmers to require MVPDs to purchase and carry undesired programming in return for the right to carry desired programming, referred to as ''tying.'' When presented with a tying arrangement, MVPDs face two choices. First, the MVPD can refuse the tying arrangement, thereby potentially depriving itself of desired, and often economically vital, programming that subscribers demand and which may be essential to attracting and retaining subscribers. Second, the MVPD can agree to the tying arrangement, thereby incurring costs for programming that its subscribers do not demand and may not want, with such costs being passed on to subscribers in the form of higher rates, and also forcing the MVPD to allocate channel capacity for the unwanted programming in place of programming that its subscribers prefer. In either case, the MVPD and its subscribers are harmed by the refusal of the programmer to offer each of its programming services on a stand-alone basis. The *NPRM* explains that small cable operators and MVPDs are particularly vulnerable to such tying arrangements because they do not have leverage in negotiations for programming due to their smaller subscriber bases. Given the problems associated with such tying arrangements, the *NPRM* is contemplating whether it may be appropriate for the Commission to preclude them and to instead require each programming service to be offered on a stand-alone basis to all MVPDs. The *NPRM* considers precluding the tying practices of broadcasters, satellite cable programmers, terrestrially delivered cable-affiliated programmers, and programmers that are affiliated with neither a cable operator nor a broadcaster, such as networks affiliated with a non-cable MVPD or a non-affiliated independent programmer.

37. *Concerns Raised by Small and Rural MVPDs.* Small and rural MVPDs have raised concerns regarding obstacles they face in trying to obtain access to programming which impede competition in the video distribution marketplace. These obstacles include (i) restrictions on the use of shared headends for receiving content; (ii) requiring small and rural MVPDs to enter into mandatory non-disclosure agreements with programmers; (iii) requiring small and rural MVPDs to provide programmers with advertising slots; and (iv) mandating unwarranted security requirements. The *NPRM* contemplates Commission action to address these practices.

38. *Modification of Program Access Complaint Procedures.* The *NPRM* also contemplates revising the Commission's program access complaint procedures in two respects. First, the *NPRM* contemplates adding an arbitration-type step as part of the Commission's determination of an appropriate remedy for program access violations. The *NPRM* is considering whether, when feasible, the Commission should request, as part of its evaluation of the appropriate remedy to impose for program access violations, that the parties each submit their best ''final offer'' proposal for the rates, terms or conditions under review. The *NPRM* considers whether the Commission should have the discretion to adopt one of the parties' proposals as the remedy for the program access complaint. Second, the *NPRM* is considering whether to allow complainants to request a stay of any action or proposed action that would change an existing program contract that is the subject of a program access complaint, pending the resolution of the program access complaint. In the *NPRM*, the Commission agrees that the threat of temporary foreclosure pending resolution of a complaint may impair settlement negotiations and may discourage parties from filing legitimate complaints. The *NPRM* thus contemplates whether the issuance of temporary stay orders would encourage parties to resolve program access disputes and to make use of the Commission's complaint procedures when needed. The *NPRM* considers whether complainants should be required to formally request such relief from the Commission and establish that they are likely to prevail on the merits of their complaint; will suffer irreparable harm absent a stay; that the balance of harms to the parties favors grant of a stay; and that the public interest favors grant of the stay. The *NPRM* also considers whether, as part of a showing of irreparable harm, complainants may discuss the likelihood that subscribers would switch MVPDs to obtain the programming in dispute for a long enough period to make the strategy profitable to the respondent. The *NPRM* further contemplates whether these stays should be routinely granted when the facts support their issuance and that they will help to encourage settlement negotiations. The *NPRM* considers the nature of the stay, that is, whether both the complainant and the respondent will be subject to the stay order, and required to fulfill their respective obligations under the terms and conditions of the carriage contract in issue, while the stay is in effect. The *NPRM* also contemplates whether complainants will be permitted to drop the programming that is the subject of the program access dispute unless and until a request to dismiss the complaint with prejudice is granted by the Commission. The *NPRM* considers whether the length of the stay should be entirely discretionary. The *NPRM* also considers whether the Commission should include, as part of its final order resolving the complaint or resolving damages, adjustments to its remedies that make the terms of the new agreement between the parties retroactive to the expiration date of the previous agreement.

39. In the *NPRM*, the Commission seeks comment on the foregoing issues. In particular, the *NPRM* invites comment on issues that may impact small entities, including MVPDs and programmers.

Legal Basis

40. The authority for the action proposed in the rulemaking is contained in section 4(i), 303, and 628 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303, and 548.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

41. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. *See* 5 U.S.C. 603(b)(3). The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,''

and ''small governmental jurisdiction.'' *See* 5 U.S.C. 601(6). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. *See* 5 U.S.C. 601(3). A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). *See* 15 U.S.C. 632.

42. *Wired Telecommunications Carriers.* The 2007 North American Industry Classification System (NAICS) defines ''Wired Telecommunications Carriers'' (2007 NAISC Code 517110) to include the following three classifications which were listed separately in the 2002 NAICS: Wired Telecommunications Carriers (2002 NAICS Code 517110), Cable and Other Program Distribution (2002 NAISC Code 517510), and Internet Service Providers (2002 NAISC Code 518111). The 2007 NAISC defines this category as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.'' The SBA has developed a small business size standard for Wired Telecommunications Carriers, which is all firms having 1,500 employees or less. According to Census Bureau data for 2002, there were a total of 27,148 firms in the Wired Telecommunications Carriers category (2002 NAISC Code 517110) that operated for the entire year; 6,021 firms in the Cable and Other Program Distribution category (2002 NAISC Code 517510) that operated for the entire year; and 3,408 firms in the Internet Service Providers category (2002 NAISC Code 518111) that operated for the entire year. Of these totals, 25,374 of 27,148 firms in the Wired Telecommunications Carriers category (2002 NAISC Code 517110) had less than 100 employees; 5,496 of 6,021 firms in the Cable and Other Program Distribution category (2002 NAISC Code 517510) had less than 100 employees; and 3,303 of the 3,408 firms in the Internet Service Providers category (2002 NAISC Code 518111) had less than 100 employees. Thus, under this size standard, the majority of firms can be considered small.

43. *Cable and Other Program Distribution.* The 2002 NAICS defines this category as follows: ''This industry comprises establishments primarily engaged as third-party distribution systems for broadcast programming. The establishments of this industry deliver visual, aural, or textual programming received from cable networks, local television stations, or radio networks to consumers via cable or direct-to-home satellite systems on a subscription or fee basis. These establishments do not generally originate programming material.'' This category includes, among others, cable operators, direct broadcast satellite (DBS) services, home satellite dish (HSD) services, satellite master antenna television (SMATV) systems, and open video systems (OVS). The SBA has developed a small business size standard for Cable and Other Program Distribution, which is all such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. Thus, under this size standard, the majority of firms can be considered small.

44. *Cable System Operators (Rate Regulation Standard).* The Commission has also developed its own small business size standards for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers nationwide. As of 2006, 7,916 cable operators qualify as small cable companies under this standard. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Industry data indicate that 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers. Thus, under this standard, most cable systems are small.

45. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' There are approximately 65.4 million cable subscribers in the United States today. Accordingly, an operator serving fewer than 654,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 654,000 subscribers or less totals approximately 7,916. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

46. *Direct Broadcast Satellite (DBS) Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic ''dish'' antenna at the subscriber's location. Because DBS provides subscription services, DBS falls within the SBA-recognized definition of Cable and Other Program Distribution. This definition provides that a small entity is one with $13.5 million or less in annual receipts. Currently, three operators provide DBS service, which requires a great investment of capital for operation: DIRECTV, EchoStar (marketed as the DISH Network), and Dominion Video Satellite, Inc. (Dominion) (marketed as Sky Angel). All three currently offer subscription services. Two of these three DBS operators, DIRECTV and EchoStar Communications Corporation (EchoStar), report annual revenues that are in excess of the threshold for a small business. The third DBS operator, Dominion's Sky Angel service, serves fewer than one million subscribers and provides 20 family and religion-oriented channels. Dominion does not report its annual revenues. The Commission does not know of any source which provides this information and, thus, we have no way of confirming whether Dominion qualifies as a small business. Because DBS service requires significant capital,

we believe it is unlikely that a small entity as defined by the SBA would have the financial wherewithal to become a DBS licensee. Nevertheless, given the absence of specific data on this point, we recognize the possibility that there are entrants in this field that may not yet have generated $13.5 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

47. *Private Cable Operators (PCOs) also known as Satellite Master Antenna Television (SMATV) Systems.* PCOs, also known as SMATV systems or private communication operators, are video distribution facilities that use closed transmission paths without using any public right-of-way. PCOs acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. The SBA definition of small entities for Cable and Other Program Distribution Services includes PCOs and, thus, small entities are defined as all such companies generating $13.5 million or less in annual receipts. Currently, there are approximately 150 members in the Independent Multi-Family Communications Council (IMCC), the trade association that represents PCOs. Individual PCOs often serve approximately 3,000–4,000 subscribers, but the larger operations serve as many as 15,000–55,000 subscribers. In total, PCOs currently serve approximately one million subscribers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten PCOs, we believe that a substantial number of PCOs may qualify as small entities.

48. *Home Satellite Dish (HSD) Service.* Because HSD provides subscription services, HSD falls within the SBA-recognized definition of Cable and Other Program Distribution, which includes all such companies generating $13.5 million or less in revenue annually. HSD or the large dish segment of the satellite industry is the original satellite-to-home service offered to consumers, and involves the home reception of signals transmitted by satellites operating generally in the C-band frequency. Unlike DBS, which uses small dishes, HSD antennas are between four and eight feet in diameter and can receive a wide range of unscrambled (free) programming and scrambled programming purchased from program packagers that are licensed to facilitate subscribers' receipt of video programming. There are approximately 30 satellites operating in the C-band, which carry over 500 channels of programming combined; approximately 350 channels are available free of charge, and 150 are scrambled and require a subscription. HSD is difficult to quantify in terms of annual revenue. HSD owners have access to program channels placed on C-band satellites by programmers for receipt and distribution by MVPDs. Commission data shows that, between June 2004 and June 2005, HSD subscribership fell from 335,766 subscribers to 206,358 subscribers, a decline of more than 38 percent. The Commission has no information regarding the annual revenue of the four C-Band distributors.

49. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service comprises Multichannel Multipoint Distribution Service (MMDS) systems and Multipoint Distribution Service (MDS). MMDS systems, often referred to as ''wireless cable,'' transmit video programming to subscribers using the microwave frequencies of MDS and Educational Broadband Service (EBS) (formerly known as Instructional Television Fixed Service (ITFS)). We estimate that the number of wireless cable subscribers is approximately 100,000, as of March 2005. As previously noted, the SBA definition of small entities for Cable and Other Program Distribution, which includes such companies generating $13.5 million in annual receipts, appears applicable to MDS and ITFS.

50. The Commission has also defined small MDS (now BRS) entities in the context of Commission license auctions. For purposes of the 1996 MDS auction, the Commission defined a small business as an entity that had annual average gross revenues of less than $40 million in the previous three calendar years. This definition of a small entity in the context of MDS auctions has been approved by the SBA. In the MDS auction, 67 bidders won 493 licenses. Of the 67 auction winners, 61 claimed status as a small business. At this time, the Commission estimates that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than $40 million and are thus considered small entities. MDS licensees and wireless cable operators that did not receive their licenses as a result of the MDS auction fall under the SBA small business size standard for Cable and Other Program Distribution, which includes all such entities that do not generate revenue in excess of $13.5 million annually. Information available to us indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of $13.5 million annually. Therefore, we estimate that there are approximately 850 small entity MDS (or BRS) providers, as defined by the SBA and the Commission's auction rules.

51. Educational institutions are included in this analysis as small entities; however, the Commission has not created a specific small business size standard for ITFS (now EBS). We estimate that there are currently 2,032 ITFS (or EBS) licensees, and all but 100 of the licenses are held by educational institutions. Thus, we estimate that at least 1,932 ITFS licensees are small entities.

52. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. The SBA definition of small entities for Cable and Other Program Distribution, which includes such companies generating $13.5 million in annual receipts, appears applicable to LMDS. The Commission has also defined small LMDS entities in the context of Commission license auctions. In the 1998 and 1999 LMDS auctions, the Commission defined a small business as an entity that had annual average gross revenues of less than $40 million in the previous three calendar years. Moreover, the Commission added an additional classification for a ''very small business,'' which was defined as an entity that had annual average gross revenues of less than $15 million in the previous three calendar years. These definitions of ''small business'' and ''very small business'' in the context of the LMDS auctions have been approved by the SBA. In the first LMDS auction, 104 bidders won 864 licenses. Of the 104 auction winners, 93 claimed status as small or very small businesses. In the LMDS re-auction, 40 bidders won 161 licenses. Based on this information, we believe that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

53. *Open Video Systems (OVS).* The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA-recognized definition of Cable and Other Program Distribution Services, which provides that a small entity is one with $13.5 million or less in annual receipts. The Commission has approved approximately 120 OVS certifications with some OVS operators now providing service. Broadband service providers (BSPs) are currently the only significant holders of OVS certifications or local OVS franchises, even though OVS is one of four statutorily-recognized options for local exchange carriers (LECs) to offer video programming services. As of June 2005, BSPs served approximately 1.4 million subscribers, representing 1.49 percent of all MVPD households. Among BSPs, however, those operating under the OVS framework are in the minority. As of June 2005, RCN Corporation is the largest BSP and 14th largest MVPD, serving approximately 371,000 subscribers. RCN received approval to operate OVS systems in New York City, Boston, Washington, DC and other areas. The Commission does not have financial information regarding the entities authorized to provide OVS, some of which may not yet be operational. We thus believe that at least some of the OVS operators may qualify as small entities.

54. *Cable and Other Subscription Programming.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. * * * These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.'' The SBA has developed a small business size standard for firms within this category, which is all firms with $13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were 270 firms in this category that operated for the entire year. Of this total, 217 firms had annual receipts of under $10 million and 13 firms had annual receipts of $10 million to $24,999,999. Thus, under this category and associated small business size standard, the majority of firms can be considered small.

55. *Small Incumbent Local Exchange Carriers.* We have included small incumbent local exchange carriers in this present RFA analysis. A ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent local exchange carriers in this RFA, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

56. *Incumbent Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,307 carriers, an estimated 1,019 have 1,500 or fewer employees, and 288 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange services are small businesses.

57. *Competitive Local Exchange Carriers, Competitive Access Providers (CAPs), ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers.''* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 859 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 859 carriers, an estimated 741 have 1,500 or fewer employees and 118 have more than 1,500 employees. In addition, 16 carriers have reported that they are ''Shared-Tenant Service Providers,'' and all 16 are estimated to have 1,500 or fewer employees. In addition, 44 carriers have reported that they are ''Other Local Service Providers.'' Of the 44, an estimated 43 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers'' are small entities.

58. *Electric Power Generation, Transmission and Distribution.* The Census Bureau defines this category as follows: ''This industry group comprises establishments primarily engaged in generating, transmitting, and/or distributing electric power. Establishments in this industry group may perform one or more of the following activities: (1) Operate generation facilities that produce electric energy; (2) operate transmission systems that convey the electricity from the generation facility to the distribution system; and (3) operate distribution systems that convey electric power received from the generation facility or the transmission system to the final consumer.'' The SBA has developed a small business size standard for firms in this category: ''A firm is small if, including its affiliates, it is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours.'' According to Census Bureau data for 2002, there were 1,644 firms in this category that operated for the entire year. Census data do not track electric output and we have not determined how many of these firms fit the SBA size standard for small, with no more than 4 million megawatt hours of electric output. Consequently, we estimate that 1,644 or fewer firms may be considered small under the SBA small business size standard.

59. *Television Broadcasting.* The SBA defines a television broadcast station as a small business if such station has no more than $13.0 million in annual receipts. Business concerns included in this industry are those ''primarily engaged in broadcasting images together with sound.'' The Commission has estimated the number of licensed commercial television stations to be 1,376. According to Commission staff review of the BIA Financial Network, MAPro Television Database (BIA) on March 30, 2007, approximately 986 of an estimated 1,374 commercial television stations (or approximately 72 percent) have revenues of $13.5 million or less. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Our estimate,

therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. The Commission has estimated the number of licensed NCE television stations to be 380. The Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

60. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also, as noted, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

Description of Proposed Reporting, Recordkeeping and Other Compliance Requirements

61. The rules ultimately adopted as a result of this *NPRM* may contain new or modified information collections. We anticipate that none of the changes would result in an increase to the reporting and recordkeeping requirements of small entities. We invite small entities to comment in response to the *NPRM*.

Steps Taken to Minimize Significant Impact on Small Entities and Significant Alternatives Considered

62. The RFA requires an agency to describe any significant alternatives that it has considered in proposing regulatory approaches, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. First, regarding the establishment of a procedure that would shorten the five-year term of the extension of the exclusive contract prohibition, the Commission may choose to establish such a procedure or, in the alternative, it may not choose to do so. Second, regarding the extension of the program access rules to terrestrially delivered cable-affiliated programmers, the Commission may choose to extend these rules to terrestrially delivered cable-affiliated programmers or, in the alternative, it may choose not to extend these rules to such programmers. Third, regarding expansion of the exclusive contract prohibition to apply to non-cable-affiliated programming that is affiliated with a different MVPD, principally a DBS provider, the Commission may choose to extend the exclusive contract prohibition to apply to such non-cable-affiliated programming or, in the alternative, it may choose not to extend the exclusive contract prohibition to such programming. Fourth, regarding the practice of programmers to engage in tying of desired with undesired programming, the Commission may choose to preclude all such tying arrangements or, in the alternative, it may choose not to preclude any such arrangements or, in the alternative, it may choose to preclude only certain tying arrangements. Fifth, with respect to concerns raised by small and rural MVPDs regarding conditions imposed by programmers for access to content, the Commission may choose to take action to address some or all of these concerns or, in the alternative, it may choose not to take action to address these concerns. Sixth, regarding the establishment of a process whereby a program access complainant may seek a temporary stay of any proposed changes to its existing programming contract pending resolution of the complaint, the Commission may establish such a process or, in the alternative, it may choose not to establish such a process. Seventh, regarding the requirement that parties submit to the Commission, when requested, ''final offer'' proposals as part of the remedy phase of the complaint process, the Commission may adopt such a requirement or, in the alternative, it may choose not to adopt such a requirement. We invite comment on the options the Commission is considering, or alternatives thereto as referenced above, and on any other alternatives commenters may wish to propose for the purpose of minimizing significant economic impact on smaller entities.

Federal Rules Which Duplicate, Overlap, or Conflict With the Commission's Proposals

63. None.

F. Additional Information

64. For additional information on this proceeding, contact Steven Broeckaert, *Steven.Broeckaert@fcc.gov*; David Konczal, *David.Konczal@fcc.gov*; or Katie Costello, *Katie.Costello@fcc.gov*; of the Media Bureau, Policy Division, (202) 418–2120.

VIII. Ordering Clauses

65. Accordingly, *it is ordered*, pursuant to the authority found in sections 4(i), 303(r), and 628 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 548, this *Notice of Proposed Rulemaking Is Adopted.*

66. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 07–5388 Filed 10–30–07; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 7, 8, 12, and 39

[FAR Case 2005–014; Docket 2007-0001; Sequence 9]

RIN 9000–AK83

Federal Acquisition Regulation; FAR Case 2005–014, SmartBUY

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 implement the Governmentwide Enterprise Software Licensing Program,

also known as SmartBUY. This action is necessary to comply with Office of Management and Budget Memorandum M–04–08, Maximizing Use of SmartBuy and Avoiding Duplication of Agency Activities with the President's 24 E-Gov Initiatives, dated February 25, 2004. By leveraging the Federal Government Enterprise Software Licensing Program, the Government will achieve the maximum cost savings and favorable terms and conditions for acquiring software and software maintenance. This rule impacts contracting officers and other acquisition officials responsible for reviewing the terms, conditions, and prices for the acquisition of commercial software and software maintenance.

DATES: Interested parties should submit written comments to the FAR Secretariat on or before December 31, 2007 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAR case 2005–014, 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 ''2005-014''. 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 ''2005-014'' in the ''Document Title'' field. Select the ''Submit'' button.
- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR case 2005–014, 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 Ms. Jeritta Parnell, Procurement Analyst, at (202) 501–4082 for clarification of content. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755. Please cite FAR case 2005–014.

SUPPLEMENTARY INFORMATION:

A. Background

Pursuant to Section 5112 of the Clinger-Cohen Act of 1996 (40 U.S.C. 11302), the Office of Management and Budget (OMB) is responsible for improving the acquisition and use of information technology (IT) by the Federal Government and designating Executive Agents for Governmentwide acquisitions of IT. To ensure that the Federal Government is maximizing its buying power to achieve the cost savings and favorable terms and conditions for commercial software, OMB created the SmartBUY initiative. GSA is designated as the Executive Agent for the SmartBUY initiative.

This rule proposes to amend the FAR to ensure SmartBUY is considered during acquisition planning, and prescribes the policies and procedures for using SmartBUY enterprise agreements.

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 applies to commercial agreements under the SmartBUY Program that are based on existing negotiated contracts. These agreements direct contracting officers to consider established contracting vehicles. Small businesses have participated in the SmartBuy Program to date. In fact, three of the six existing agreements are with small businesses.

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 Part 7, 8, 12, and 39 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 2005–014), 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 7, 8, 12, and 39

Government procurement.

Dated: October 22, 2007.

Al Matera,

Director, Office of Acquisition Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 7, 8, 12, and 39 as set forth below:

1. The authority citation for 48 CFR parts 7, 8, 12, and 39 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 7—ACQUISITION PLANNING

2. Amend section 7.103 by adding paragraph (v) to read as follows:

7.103 Agency-head responsibilities.

* * * * *

(v) Ensuring that agency planners fulfill requirements for commercial software or related services, such as software maintenance, in accordance with the SmartBUY program (see FAR Subpart 8.9).

3. Amend section 7.105 by adding paragraph (b)(4)(ii)(B)(*3*) to read as follows:

7.105 Contents of written acquisition plans.

* * * * *

(b) * * *

(4) * * *

(ii) * * *

(B) * * *

(*3*) Ordering through a SmartBUY agreement leverages Government user volume and achieves a substantial price discount.

* * * * *

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

4. Add subpart 8.9 to read as follows:

Subpart 8.9—Acquisition of Commercial Software

Sec.

8.900 Scope of subpart.
8.901 Definitions.
8.902 General.
8.903 Policy.
8.904 Acquisition procedures.
8.905 Approval and Notification.

8.900 Scope of subpart.

This subpart prescribes the policies and procedures for acquisition of commercial software or related services, such as software maintenance, through

the Governmentwide Enterprise Software Program, also known as SmartBUY.

8.901 Definitions.

As used in this subpart—

Enterprise software agreement (ESA) means an agreement established for agencies to use to acquire designated commercial software or related services, such as software maintenance.

Software maintenance means activities performed and/or services provided by the original equipment manufacturer (OEM) as standard services to keep software functioning to the commercial specification, at established catalog or market prices, *e.g.*, the right to receive and use upgraded versions of software, updates, and revisions.

Software product manager means the Government official who manages an enterprise software agreement.

8.902 General.

SmartBUY is a consolidated purchasing program for the acquisition of commercial software or related services, such as software maintenance. SmartBUY is designed to provide all agencies, regardless of their size, the greatest price discounts available to the Federal Government. The SmartBUY Software Program (see website at *http://www.gsa.gov/smartbuy*) promotes the use of Enterprise Software Agreements (ESAs) with contractors, called SmartBUY agreements, that allow the Government to obtain favorable terms and pricing for commercial software or related services, such as software maintenance.

8.903 Policy.

Prior to issuing contracts for commercial software or related services, such as software maintenance, agencies shall review the SmartBUY agreements at *http://www.gsa.gov/smartbuy* or *http://www.esi.mil*. Federal agencies shall place an order to fulfill requirements for commercial software or related services, such as software maintenance, when a SmartBUY agreement is available and is applicable to the agency's requirement and volume.

8.904 Acquisition procedures.

(a) The contracting officer or other ordering official must review the terms, conditions, and prices using market research or other procurement practices to determine if commercial software or related services, such as software maintenance, is available through a SmartBUY agreement.

(b) When the terms, conditions, and prices represent a best value to the Government, the contracting officer or other ordering official shall place an order to fulfill the requirement for commercial software or related services, such as software maintenance, through a SmartBUY agreement.

(c) When an existing SmartBUY agreement does not represent the best value to the Government, the contracting officer or other ordering official should allow the contractor an opportunity to provide the same or a better value under the SmartBUY agreement before using alternate procurement methods. In such cases, the contracting officer or other ordering official should notify the SmartBUY program office Software Product Manager of specific concerns, so that the SPM can take action to potentially improve an existing SmartBUY agreement's terms, conditions or prices through the SmartBUY website.

(d) When an available SmartBUY agreement will not be used, the contracting officer or other ordering official must comply with the approval and notification procedures in 8.905.

(e) When the required commercial software or related services, such as software maintenance, is no[0]t covered by a SmartBUY agreement, the contracting officer may fulfill a requirement using other procurement methods.

8.905 Approval and Notification.

(a) The contracting officer or ordering official must get approval from the agency Senior Procurement Executive and the agency Chief Information Officer, or as provided by agency procedures, when not using an available SmartBUY agreement. The approval shall—

(1) Describe the agency's requirement;

(2) Explain the reason for not using an existing SmartBUY agreement; and

(3) Describe how the agency will satisfy its needs for commercial software and negotiate a fair and reasonable price.

(b) The contracting officer or ordering official must notify GSA when an available SmartBUY agreement is not used to acquire commercial software or related services, such as software maintenance, by sending a copy of the approval to GSA at— General Services Administration, Deputy Associate Administrator, Office of Technology Strategy (ME), 1800 F Street, NW, Washington, DC 20406; or send via e-mail to *SmartBUYwaiver@gsa.gov*.

PART 12—ACQUISITION OF COMMERCIAL ITEMS

5. Amend section 12.212 by adding paragraph (c) to read as follows:

12.212 Computer software.

* * * * *

(c) Acquisition officials shall consider using SmartBUY Enterprise Software Agreements when acquiring commercial software or related services, such as software maintenance (see FAR Subpart 8.9).

PART 39—ACQUISITION OF INFORMATION TECHNOLOGY

6. Amend section 39.101 by revising paragraph (b) to read as follows:

39.101 Policy.

* * * * *

(b)(1) In acquiring information technology, agencies shall identify their requirements pursuant to—

(i) OMB Circular A–130, including consideration of security of resources, protection of privacy, national security and emergency preparedness, accommodations for individual with disabilities, and energy efficiency; and

(ii) FAR 8.903 and the availability of a SmartBUY Agreement.

(2) When developing an acquisition strategy, contracting officers should consider the rapidly changing nature of information technology through market research (see Part 10) and the application of technology refreshment techniques.

* * * * *

[FR Doc. 07–5405 Filed 10–30–07; 8:45 am]

BILLING CODE 6820–EP–S

Notices

Federal Register

Vol. 72, No. 210

Wednesday, October 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.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Notice of Meeting

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation (ACHP) will meet on Wednesday, November 7, 2007. The meeting will be held in Room M09 in the Old Post Office Building, 1100 Pennsylvania Ave, NW., Washington, DC at 9 a.m. The ACHP was established by the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*) to advise the President and Congress on national historic preservation policy and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The ACHP's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, Defense, Housing and Urban Development, Commerce, Education, Veterans Affairs, and Transportation; the Administrator of the General Services Administration; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; a Governor; a Mayor; a Native American; and eight non-Federal members appointed by the President.

The agenda for the meeting includes the following:

Call To Order—9 a.m.
I. Chairman's Welcome.
II. Preservation Awards Presentation.
III. Native American Activities.
  A. Native American Advisory Group.
  B. Native American Program Report.
IV. Implementation of ACHP Recommendations from the Preserve America Summit.
  A. Meeting with Lead Agency Policy Officials.
  B. Recommendations Implemented by the ACHP.
  C. Preserve America/Save America's Treasures Authorizing Legislation.
V. Preservation Initiatives Committee.
  A. Legislative Update.
  B. Preserve America Update.
  C. Economic and Community Development Benefits of Heritage Tourism Project.
VI. Federal Agency Programs Committee.
  A. Alternate Procedures of Corps of Engineers' Appendix C.
  B. National Park Service Programmatic Agreement.
  C. Federal Agency Partnerships.
VII. Communications, Education, and Outreach Committee.
  A. 2008 Preserve America Presidential Award Nominations.
  B. Preserve America Video.
VIII. Chairman's Report.
  A. ACHP Alumni Foundation.
  B. ACHP FY 2008 Funding and FY 2009 Budget Request.
IX. Executive Director's Report.
X. New Business.
XI. Adjourn.

Note: The meetings of the ACHP are open to the public. If you need special accommodations due to a disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., Room 803, Washington DC, 202–606–8503, at least seven (7) days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., #803, Washington, DC 20004.

Dated: October 26, 2007.

Ralston Cox,

Acting Executive Director.

[FR Doc. 07–5409 Filed 10–30–07; 8:45 am]

BILLING CODE 4310–K6–M

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

October 25, 2007.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Agricultural Statistics Service

Title: Milk and Milk Products.

OMB Control Number: 0535–0020.

Summary of Collection: The National Agricultural Statistics Service's (NASS) primary function is to prepare and issue current official state and national estimates of crop and livestock production. Estimates of milk production and manufactured dairy products are an integral part of this program. Milk and dairy statistics are used by the U.S. Department of Agriculture (USDA) to help administer price support programs and by the dairy industry in planning, pricing, and projecting supplies of milk and milk products. The general authority for these data collection activities is granted under U.S. Code Title 7, Section 2204.

Need and Use of the Information: NASS will collect information on monthly estimates of stocks, shipments, and selling prices for such products as butter, cheese, dry whey, and nonfat dry milk. Cheddar cheese prices are collected weekly and used by USDA to assist in the determination of the fair market value of raw milk. Estimates of total milk production, number of milk cows, and milk production per cow, are used by the dairy industry in planning, pricing, and projecting supplies of milk and milk products. Collecting data less frequently would prevent USDA and the agricultural industry from keeping abreast of changes at the State and national level.

Description of Respondents: Farms; Business or other for-profit.

Number of Respondents: 25,071.

Frequency of Responses: Reporting: Quarterly; Weekly; Monthly; Annually.

Total Burden Hours: 11,061.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E7–21360 Filed 10–30–07; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Forest Service

Apache-Sitgreaves National Forests, Apache, Greenlee and Navajo Counties, AZ; Apache-Sitgreaves National Forests Public Motorized Travel Management Plan

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement; Correction.

SUMMARY: On October 10, 2007, the **Federal Register** published a Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for the Motorized Travel Management Plan on the Apache-Sitgreaves National Forests (72 FR 57514–57517). That document indicated that the proposed transportation system is depicted in detail on the *Apache-Sitgreaves National Forests Travel Management Plan Proposed Action Map* located on the Forests Web site and that the Forests transportation system open to motorized travel under this proposal would be approximately 2,892 miles. Correction of both of these statements is necessary.

Correction: In the **Federal Register** of October 10, 2007, in FR Doc. 72–195, on page 57515, correct the proposed Action caption, second column, last paragraph, first and second sentence to read:

The Forests transportation system open to motorized travel under this proposal would be approximately 2868 miles. This is a change of approximately 78 miles from the existing condition of approximately 2,946 open miles.

In the **Federal Register** of October 10, 2007, in FR Doc. 72–195, on page 57515, correct the Proposed Action caption, third column, second paragraph, first sentence to read:

The proposed motorized public transportation system maps will be available for your review, prior to the public meetings, on the Forests Web Site: *http://www.fs.fed.us/r3/asnf/projects/travel-management.shtml.*

FOR FURTHER INFORMATION CONTACT: Jim Copeland, Travel Management Team Leader at (928) 333–4301/(928) 339–4384.

Dated: October 24, 2007.

Elaine Zieroth,

Forests Supervisor, Apache-Sitgreaves National Forests.

[FR Doc. 07–5396 Filed 10–30–07; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Public Meeting, Davy Crockett National Forest Resource Advisory Committee

October 24, 2007.

SUMMARY: In accordance with the Secure Rural Schools and Community Self Determination Act of 2000 (Pub. L. 106–393) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of Agriculture, Forest Service, Davy Crockett National Forest Resource Advisory Committee (RAC) meeting will meet as indicated below.

DATES: The Davy Crockett National Forest RAC meeting will be held on November 29, 2007.

ADDRESSES: The Davy Crockett National Forest RAC meeting will be held at the Davy Crockett Ranger Station located on State Highway 7, approximately one-quarter mile West of FM 227 in Houston County, Texas. The meeting will begin at 4 p.m. and adjourn at approximately 6 p.m. A public comment period will be 5:45 p.m.

FOR FURTHER INFORMATION CONTACT: Brian Townsend, Designated Federal Officer, Davy Crockett National Forest, Route 1 Box 55 FS, Kennard, TX 75847: Telephone: 936–655–2299 or e-mail at: *btownsend@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The Davy Crockett National Forest RAC proposes projects and funding to the Secretary of Agriculture under Section 203 of the Secure Rural Schools and Community Self Determination Act of 2000. The purpose of the November 29, 2007 meeting is to update the members on the following: Project status, legislation, and the Groveton Stewardship Project. These meetings are open to the public. The public may present written comments to the RAC. Each formal RAC meeting will also have time, as identified above, persons wishing to comment and time available, the time for individual oral comments may be limited.

Brian Townsend,

Designated Federal Officer, Davy Crockett National Forest RAC.

[FR Doc. 07–5398 Filed 10–30–07; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Business-Cooperative Service's (RBS) intention to request an extension of a currently approved information collection in support of the program for 7 CFR part 1951, subpart R, ''Rural Development Loan Servicing.''

DATES: Comments on this notice must be received by December 31, 2007, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Anthony Ashby, Rural Business-Cooperative Service, USDA, STOP 3225, 1400 Independence Ave., SW., Washington, DC 20250–3225, Telephone: (202) 720–0661.

SUPPLEMENTARY INFORMATION:

Title: Rural Development Loan Servicing.

OMB Number: 0570–0015.

Expiration Date of Approval: August 31, 2008.

Type of Request: Extension of a currently approved information collection.

Abstract: The regulations contain various requirements for information from the intermediaries and some requirements may cause the intermediary to require information from ultimate recipients. The

information requested is vital to RBS for prudent loan servicing, credit decisions and reasonable program monitoring.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 3 hours per response.

Respondents: Non-profit corporations, public agencies, and cooperatives.

Estimated Number of Respondents: 420.

Estimated Number of Responses per Respondent: 10.

Estimated Number or Responses: 4,185.

Estimated Total Annual Burden on Respondents: 11,235 hours.

Copies of this information collection can be obtained from Cheryl Thompson, Regulations and Paperwork Management Branch, at (202) 692–0043.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RBS, including whether the information will have practical utility; (b) the accuracy of RBS estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on 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. Comments may be sent to Cheryl Thompson, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave., SW., Washington, DC 20250–0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: October 25, 2007.

Ben Anderson,

Administrator, Rural Business-Cooperative Service.

[FR Doc. E7–21466 Filed 10–30–07; 8:45 am]

BILLING CODE 3410–XY–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Notice of Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has scheduled its regular business meetings to take place in Washington, DC., Tuesday and Wednesday, November 13–14, 2007, at the times and location noted below.

DATES: The schedule of events is as follows:

Tuesday, November 13, 2007

10 a.m.–5 p.m. Airport Ad Hoc Committee.

Wednesday, November 14, 2007

10 a.m.–11 a.m. Committee of the Whole: 2008 Out-of-Town Event.

11 a.m.–2:30 p.m. Rulemaking meeting (Closed Session).

3 p.m.–4 p.m. Board meeting.

ADDRESSES: All meetings will be held at The Madison Hotel, 1177 15th Street, NW., Washington, DC, 20005.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact Lawrence W. Roffee, Executive Director, (202) 272–0001 (voice) and (202) 272–0082 (TTY).

SUPPLEMENTARY INFORMATION: At the Board meeting, the Access Board will consider the following agenda items:

- Approval of the June and September 2007 draft Board Meeting Minutes.
- ADA/ABA Accessibility Guidelines; Federal Agency Updates.
- Airport Ad Hoc Committee Report.
- Rulemaking Update.
- Election Assistance Commission Activities Report.
- Technical Programs Committee Report.
- Committee of the Whole Report: 2008 Out-of-Town Meeting.
- Executive Committee Report.

All meetings are accessible to persons with disabilities. An assistive listening system, computer assisted real-time transcription (CART), and sign language interpreters will be available at the Board meetings. Persons attending Board meetings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants.

Lawrence W. Roffee,

Executive Director.

[FR Doc. E7–21343 Filed 10–30–07; 8:45 am]

BILLING CODE 8150–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Hawaii Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights and the regulations of the Federal Advisory Committee Act (FACA), that a meeting of the Hawaii Advisory Committee will convene at 10 a.m. and adjourn at 3 p.m. (Hawaii Time) on Thursday, November 15, 2007, in the South Pacific Ballroom #3 at the Hilton Hawaiian Village, 2005 Kalia Road, Honolulu, Hawaii 96815.

The purpose of the meeting is for the committee to consider and deliberate on the information it gathered during briefings and open session meetings convened in August and September 2007, addressing the ''The Native Hawaiian Government Reorganization Act of 2007,'' also known as the Akaka bill. The committee will also plan its future activities.

Members of the public are entitled to submit written comments; the comments must be received in the Western Regional Office by November 25, 2007. The address is 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012. Persons wishing to e-mail their comments or who desire additional information should contact Angelica Trevino, Secretary, Western Regional Office, U.S. Commission on Civil Rights at (213) 894–3437 [TDY] 213–894–3435, or by e-mail at *atrevino@usccr.gov*.

Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Western Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov*, or to contact the Western Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, October 25, 2007.

Ivy L. Davis,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. E7–21405 Filed 10–30–07; 8:45 am]

BILLING CODE 6335–02–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket Nos. 04–BIS–04, 04–BIS–05, 04–BIS–06, 04–BIS–07]

In the Matters of: Megatech Engineering & Services Pvt. Ltd., Ajay Ahuja, Ravi Shettugar, and T.K. Mohan Respondents; Decision And Order

This matter is before me upon a Recommended Decision and Order of an Administrative Law Judge (''ALJ''), as further described below.

On February 2, 2004, the Bureau of Industry and Security (''BIS'') initiated four administrative proceedings by filing Charging Letters alleging that Megatech Engineering & Services Pvt. Ltd. (''Megatech'') and Ajay Ahuja (''Ahuja'') each committed four violations of the Export Administration Regulations (''Regulations'') and that Ravi Shettigar (''Shettigar'') and T.K. Mohan (''Mohan'') each committed three violations of the Regulations,[1] issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420 (2000)) (''Act'').[2] On August 13, 2004, the ALJ consolidated the cases involving Megatech, Ahuja, Shettigar and Mohan. Thus, use of the term ''the Respondents'' in this document refers to Megatech, Ahuja, Shettigar and Mohan, collectively.

The charges against each Respondent are as follows:

Charge 1: Conspiracy to Export Items Subject to the Regulations to a Person Listed on the Entity List Without BIS Authorization: From on or about April 1, 2000, through on or about August 31, 2001, the Respondents conspired with others, known and unknown, to export from the United States to the Indira Gandhi Centre for Atomic Research (''IGCAR'') in India a thermal fatigue test system and a universal testing machine, both items subject to the Regulations, without a BIS export license as required by section 744.11 of the Regulations.

Charge 2: Engaging in a Transaction with Intent to Evade the Regulations: On or about June 13, 2000, in connection with the export of the fatigue test system, the Respondents took actions to evade the Regulations. Specifically, the Respondents, with others, known and unknown, developed and employed a scheme by which a company in India not on the Entity List would receive the export of the fatigue test system from the United States without a BIS license and then divert it to the true ultimate consignee, IGCAR, in violation of the Regulations.

Charge 3: Engaging in a Transaction with Intent to Evade the Regulations: On or about December 21, 2000, in connection with the attempted export of a universal testing machine, the Respondents took actions to evade the Regulations. Specifically, the Respondents, with others, known and unknown, developed and employed a scheme by which a company in India not on the Entity List would receive the export of the universal testing machine from the United States without a BIS license and then divert it to the true ultimate consignee, IGCAR, in violation of the Regulations.

Charge 4 (Respondents Megatech and Ahuja only): False Statements in the Course of an Investigation Subject to the Regulations: On or about August 16, 2001, through on or about April 8, 2002, in connection with the export of the fatigue test system, Megatech and Ahuja made false statements to the U.S. Government regarding its knowledge of and involvement in the export. Specifically, Megatech and Ahuja falsely asserted to U.S. Foreign Commercial Service Officers a lack of knowledge regarding the intended diversion of the items involved to ICGAR.

On October 1, 2007, based on the record before him, the ALJ issued a Recommended Decision and Order in which he found that the Respondents each committed the violations alleged in Charges 1–3 of the Charging Letters dated February 2, 2004. Additionally, the ALJ found that BIS did not prove by a preponderance of the evidence Charge 4 against Respondents Megatech and Ahuja. The ALJ recommended each Respondent be denied export privileges for a period of fifteen (15) years.

The ALJ'S Recommended Decision and Order, together with the entire record in this case, has been referred to me for final action under section 766.22 of the Regulations.

I find that the record supports the ALJ's findings of fact and conclusions of law regarding the allegations against the Respondents for each of Charges 1–3. I also agree with the ALJ's recommendation that the BIS has failed to prove by a preponderance of the evidence the allegations contained in Charge 4. I also find that the penalty recommended by the ALJ is appropriate, given the nature of the violations, the importance of preventing future unauthorized exports, and the lack of any mitigating circumstances. Based on my review of the entire record, I affirm the findings of fact and conclusions of law contained in the ALJ's Recommended Decision and Order.

Accordingly, it is therefore ordered,

First, that, for a period of fifteen (15) years from the date of this Order, Megatech Engineering & Services Pvt. Ltd., Ajay Ahuja, Ravi Shettigar, and T.K. Mohan, all of Post Bag #17652, A/2/10 Tapovan, Dongre Park, Chembur, Mumbai 400 074 India, and all of their successors or assigns, and when acting for or on behalf of Megatech Engineering & Services Pvt. Ltd., its officers, representatives, agents, and employees (''Denied Persons''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to Regulations, or in any other activity subject to the Regulations.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Persons any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Persons of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Persons

[1] The violations charged occurred in 2000 and 2001. The Regulations governing the violations at issue are found in the 2000 and 2001 versions of the Code of Federal Regulations (15 CFR parts 730–774 (2000–2001)). The 2007 Regulations establish the procedures that apply to this matter.

[2] 50 U.S.C. app. 2401–2420 (2000). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 15, 2007 (72 FR 46137 (Aug. 16, 2007)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)) (''IEEPA'').

acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Persons of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Persons in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and that is owned, possessed or controlled by the Denied Persons, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Persons if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, after notice and opportunity for comment as provided in section 766.23 of the Regulations, any person, firm, corporation, or business organization related to the Denied Persons by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Fifth, that this Order shall be served on the Denied Persons and on BIS, and shall be published in the **Federal Register**. In addition, the ALJ's Recommended Decision and Order, except for the section related to the Recommended Order, shall be published in the **Federal Register**.

This Order, which constitutes the final agency action in this matter, is effective immediately.

Dated: October 24, 2007.

Mario Mancuso,

Under Secretary for Industry and Security.

Recommended Decision and Order [1]

Issued: October 1, 2007.

Issued by: Hon. Walter J. Brudzinski, Administrative Law Judge.

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In the Matter of: Megatech Engineering & Services Pvt. Ltd., et al
Appendix B Notice to the Parties Regarding Review by the Under Secretary
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Preliminary Statement

On February 2, 2004, the Bureau of Industry and Security [2] (''BIS'' or ''Agency'') issued four separate Charging Letters against Respondents Megatech Engineering & Services Pvt. Ltd. (Megatech), Ajay Ahuja, Ravi Shettigar, and T.K. Mohan. The Charging Letters against Respondents Megatech and Ajay Ahuja allege identical violations of the U.S. Export Administration Act of 1979 [3] and the Export Administration Regulations [4] relating to one (1) count of conspiracy, two (2) counts of evading the regulations, and one (1) count of misrepresentation and concealment of facts. The Charging Letters against Respondents Shettigar and Mohan allege identical violations relating to one (1) count of conspiracy and two (2) counts of evading the regulations.

Briefly stated, the Agency alleges all four Respondents exported equipment controlled under the Export Administration Regulations (''EAR'' or ''Regulations'') to a prohibited entity without the required license. In Charge 1, BIS alleges violations of 15 CFR 764.2(d) in that from April 1, 2000 through August 31, 2001, Respondents conspired to export equipment from the United States to the Indira Gandhi Centre for Atomic Research (IGCAR), an organization prohibited under the Regulations from receiving controlled items. In furtherance of the conspiracy, false documentation was submitted to a U.S. exporter indicating that a party other than IGCAR was the ultimate consignee for these items. In Charges 2 and 3, BIS alleges violations of 15 CFR 764.2(h) in that Respondents developed and employed the above detailed scheme to intentionally evade the export Regulations. Charge 4, which pertains only to Megatech and Ahuja, alleges that they made false statements to Agency officials regarding Respondents' knowledge and involvement in the export of items to IGCAR in violation of 15 CFR 764.2(g).

On March 3, 2004, Respondents filed their Answers to the Agency's Charging Letter denying the allegations and formally demanding a hearing. On March 15, 2004, this case was assigned to the undersigned Administrative Law Judge for adjudication pursuant to an Interagency Agreement with the Bureau of Industry and Security.

On August 13, 2004, the proceedings against Respondents Megatech, Ahuja,

[1] For proceedings involving violations not relating to Part 760 of the Export Enforcement Regulations, 15 CFR 766.17(b) and (b)(2) prescribe that the Administrative Law Judge's decision be a ''Recommended Decision and Order.'' The violations alleged in this case are found in Part 764. Therefore, this is a ''Recommended'' decision. That section also prescribes that the Administrative Law Judge make recommended findings of fact and conclusions of law that the Under Secretary for Export Administration, Bureau of Industry and Security, U.S. Department of Commerce, must affirm, modify or vacate. 15 CFR 766.22. The Under Secretary's action is the final decision for the U.S. Commerce Department. 15 CFR 766.22(e).

[2] The Bureau of Industry and Security was formerly known as the Bureau of Export Administration. The name of the Bureau changed pursuant to an order issued by the Secretary of Commerce on April 16, 2002. *See* Industry and Security Programs: Change of Name, 67 FR 20630 (Apr. 26, 2002); *see also In the Matter of Abdulmir Madi, et al.,* 68 FR 57406 (October 3, 2003).

[3] Sections 50 U.S.C. 2401–2420 (2000) (hereinafter, ''the Act''). From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which was extended by successive Presidential Notices, the last of which was August 3, 2000 (3 CFR 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–06 (2000)) (hereinafter, ''IEEPA''). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002), as extended by the Notice of August 7, 2003 (68 FR 47833, August 11, 2003), has continued the Regulations in effect under IEEPA. The export control laws and regulations were further extended by successive Presidential Notices. *See In the Matter of Abdulmir Madi, et al.,* 68 FR 57406 (October 3, 2003).

[4] The regulations are currently codified at 15 CFR parts 730–774 (2006). The charged violations occurred from April 1, 2000 to August 31, 2001. The regulations governing the violations in these cases are found in the 2000 and 2001 versions of the 15 CFR parts 730–774 (2000–2001). The Regulations define the violations BIS has charged (part 764.2) and establish procedures that apply to these cases (part 766).

Shettigar, and Mohan were consolidated. Accordingly, reference to ''Respondents'' throughout this Recommended Decision and Order refers to Megatech, Ahuja, Shettigar, and Mohan collectively.

Over the next several months Discovery was initiated, Scheduling Orders for filing various motions were issued, and the parties continued to discuss settlement. On February 16, 2005, the Agency filed its motion to stay the proceedings for a period of 12 months due to a criminal investigation of the subject matter of the instant case. On February 28, 2005, Respondents filed a Motion for Summary Decision, which the Agency opposed, stating BIS lacks evidence to show Respondents knew the exported equipment was being diverted from a legitimate business to a prohibited entity; therefore, they cannot be held accountable for the unknown actions of others. After additional scheduling orders and motion practice, I issued an Order on May 3, 2005 granting the Agency's request to stay for period of 12 months pending disposition of the criminal investigation and holding in abeyance any decision on Respondent's Motion for Summary Decision.

Meanwhile, on December 5, 2005, counsel for Respondents filed their Notice of Withdrawal, advising that they withdraw from further representation of the above-referenced Respondents.

Since the matter was stayed, there was no further activity until June 2, 2006, when the Agency advised that the criminal investigation was completed and that no charges would be filed against Respondents. Therefore, BIS was able to proceed with the instant administrative matter. BIS further advised that it has not been in contact with Respondents since their counsel have withdrawn from representation. Therefore, BIS requested another stay through August 31, 2006 to allow it time to contact Respondents in India and determine if they have retained new counsel and possibly to continue settlement discussions. On June 5, 2006, I granted an additional stay until August 31, 2006.

On August 23, 2006, BIS advised that efforts at reaching settlement have failed and that since Respondents are not represented, it motioned to modify the Scheduling Order so as to advance this matter toward resolution. Therefore, on September 1, 2006, I ordered Respondents to advise the undersigned in writing whether they waive their right to a hearing, and, if so, the matter would be decided ''on the record;'' that is, based on subsequent evidentiary submissions as provided for at 15 CFR 766.15. I further ordered Respondents to advise whether they intend to withdraw their Motion for Summary Decision. If Respondents did not reply to the Order by October 27, 2006, it would be presumed that they waive their right to a hearing, thereby allowing this matter to proceed with a hearing and that they also withdraw their Motion for Summary Decision.

Respondents failed to respond. Therefore, on November 7, 2006, I issued an Order in invoking the presumptions made in my September 1, 2006 Order. That is, Respondents waive their right to a hearing and withdraw their Motion for Summary Judgment. Accordingly, Respondents' Motion for Summary Judgment was withdrawn and this matter proceeded to be adjudicated on the record and without a hearing.

On January 12, 2007, the Agency filed a Memorandum and Submission of Evidence to Supplement the Record together with sixty-four (64) exhibits listed in *Appendix A.* Copies of the Agency's exhibits were forwarded to Respondents. However, they did not submit any evidence in accordance with the scheduling order. Prior to starting work on the Recommended Decision and Order, the undersigned waited an additional, reasonable period of time for Respondents to submit evidence in the event of unexpected delays in mail delivery.

Title 15 CFR 766.17(d) provides that administrative enforcement proceedings not involving Part 760 of the EAR shall be concluded within one year from submission the Charging Letter unless the Administrative Law Judge extends such period for good cause shown. In light of the above-referenced stays in the proceedings, the additional time consumed by discovery due to Respondents' residence in India, as well as the additional time required for the Agency to proceed after withdrawal of Respondents' counsel, I find that good cause exists for not concluding these proceedings within the time prescribed.

All facts and issues raised in the Agency's brief have been addressed throughout the body of this Recommended Decision and Order. After careful review of the entire record in this matter, I find BIS established by a preponderance of reliable and credible evidence that Respondents conspired to export items subject to the Regulations to a prohibited entity without the required authorization in violation of 15 CFR 764.2(d) as alleged in Charge 1. I also find that the Agency established by a preponderance of reliable and credible evidence that Respondents took actions to intentionally evade the Regulations by employing a scheme to divert a fatigue test system, as alleged in Charge 2, and a universal testing system, as alleged in Charge 3, to a prohibited entity, in violation of 15 CFR 764.2(h). However, the preponderance of reliable and credible evidence does not establish a violation of 15 CFR 764.2(g), that Respondents Megatech and Ahuja, in Charge 4 of their Charging Letters, misrepresented and concealed facts in the course of an investigation.

Recommended Findings of Fact

The Findings of Fact and Conclusions of Law are based on a thorough and careful analysis of the documentary evidence, exhibits, and the entire record as a whole.

General Findings and Background

1. Megatech Engineering and Services Pvt. Ltd. (''Megatech'') is an import/export agent based in Mumbai (formally Bombay), India. *(Agency Exhibit 8).*[5] Megatech was formed in 1991 when Respondent Ajay Ahuja left his previous employer to form his own company. In doing so, Ahuja took a Minnesota-based company, MTS Systems, Inc. (''MTS Systems'' or ''MTS''), as his own client. *(Agency Exhibit 37).*

2. MTS is a United States manufacturer of high-tech testing equipment sold in India. *(Agency Exhibits 7, 37).* Examples of high-tech testing equipment produced by MTS include: (1) The servo-hydraulic dynamic testing system (also known as fatigue test system); and (2) the Servo-Hydraulic Universal Testing System (also known as the universal testing machine). *(Agency Exhibit 2).*

3. Since its founding in 1991, Megatech has been solely and exclusively dedicated to representing MTS. *(Agency Exhibits 7, 8, 37).*

4. Megatech currently employs six people: Three as service engineers and three as sales engineers. *(Agency Exhibit 8).*

5. At all relevant times, Respondents Ajay Ahuja, Ravi Shettigar, and T.K. Mohan were employees of Megatech. *(Agency Exhibit 7).*

6. Respondent Ahuja is the founder and primary administrator of Megatech, whose responsibilities include both management and sales. *(Agency Exhibit 7).* Mr. Ahuja works in the Bombay (Mumbia) office, along with T.K. Mohan and Ravi Shettigar. Respondent T.K. Mohan assists with sales, and Respondent Shettigar works in the

[5] Unless otherwise noted, the citations provided hereunder reference the exhibit numbers associated with the Agency's Memorandum and Submission of Evidence to Supplement the Record, filed on January 12, 2007. Respondents neither submitted a Memorandum nor exhibits.

service department as an engineer. *(Agency Exhibit 7).*

7. As the exclusive representative in India, Megatech handles approximately $1.5 million in sales each year on behalf of MTS. *(Agency Exhibit 8).* In addition to sales, Megatech provides support services to more than 200 MTS machines installed throughout India *(Agency Exhibit 8).*

8. To keep track of clients, Megatech maintains a database containing the names of all companies and customers to whom products are sold. *(Agency Exhibit 7).*

9. In a typical transaction, Megatech initially meets with the client to determine the customer's intended use of the equipment, the required specifications, and the customer's available budget. *(Agency Exhibits 7, 8).*

10. This information is relayed to MTS in Minnesota, who then approves the transaction in advance. Once the parameters of the transaction are outlined, Megatech negotiates a price on behalf of MTS. *(Agency Exhibit 8).*

11. Before completing an order, MTS determines whether an export license is needed under United States export laws and restrictions. *(Agency Exhibit 7).*

12. If a license is required, MTS directs Megatech to complete the license application and obtain a signature from the end-user.[6] *(Agency Exhibit 7).*

13. After Megatech facilitates the contract between MTS and the customer, MTS ships the desired equipment from Minnesota to the customer in India. *(Agency Exhibit 7).*

14. Once the equipment arrives in India, Megatech engineers install the equipment and train the customer how to use it. Megatech continues to provide on-call service to keep the equipment running long-term. *(Agency Exhibits 7, 8).*

15. One of Megatech's customers on the eastern coast of India is the Indira Gandhi Centre for Atomic Research (''IGCAR''). *(Agency Exhibits 7, 9).* IGCAR is based in Kalpakkam, India, approximately fifty miles from Chennai. Both Chennai and Kalpakkam are approximately 800 miles from Mumbai where Megatech in located. *(Agency Exhibits 4, 8).*

16. IGCAR was established in 1971 as a subordinate entity of the Department of Atomic Energy, Government of India. *(Agency Exhibits 5, 40).* The centre is engaged in a broad based multidisciplinary program of scientific research and advanced engineering. *(Agency Exhibit 5).*

Export Administration Regulations

17. The Department of Commerce, Bureau of Industry and Security is the federal agency primarily responsible for issuing licenses to individuals interested in exporting goods that have a ''dual-use.'' A commercial item has a dual-use if there is any possibility that it ''can be used both in military or other strategic casues (e.g., nuclear) and in civil applications.'' *(15 CFR 730.1 and 730.3).*

18. The Export Administration Regulations govern the export of goods with dual-use and are administered by the Bureau of Industry and Security under the authority of the Export Administration Act. *(50 App. U.S.C. 2401; 15 CFR 730.2).*

19. In an attempt to prevent dual-use items from falling into the wrong hands the EAR prescribes a complex set of regulations which are triggered depending on the type of item sought to be exported, the destination of the item, and the specific entity or person who receives it. *(15 CFR 732.1).*

20. All items that require an export license by the Agency receive an Export Control Classification Number (''ECCN'') and are listed on the Commerce Control List. This classification number determines what type of license is required. *(15 CFR 738.2 and 738.3).*

21. Items that are subject to the Regulations but not included on the Commerce Control List are classified as EAR99. *(15 CFR 774.1).*

22. On February 3, 1997, the Agency established the Entity List comprised of end-users that are ineligible to receive specified items without a license. *(Agency Exhibits 3; 62 Fed Reg. 125 (June 30, 1997)*; *15 CFR 736.2(b)(5)).* As a result, all exporters are required to obtain Agency authorization before any item subject to the EAR can be exported to a listed entity. *(Agency Exhibits 3; 62 Fed Reg. 125 (June 30, 1997); 15 CFR 736.2(b)(5)).*

23. At all relevant times, IGCAR was specifically listed on the Entity List due to its involvement in unsafeguarded nuclear research and development activities. *(Agency Exhibit 3; 62 FR 125 (June 30, 1997)).* In turn, a validated license was required to export any item to IGCAR which was subject to the Regulations, including items classified as EAR99. *(Agency Exhibits 2, 3).*

24. At all relevant times, the fatigue test system and the universal testing machine manufactured by MTS were subject to the Regulations and classified as EAR99. *(Agency Exhibit 2).*

Business Association and History With IGCAR

25. MTS System's business relationship with IGCAR began prior to being placed on the Entity List. More specifically, MTS supplied a machine to IGCAR between 1984 and 1985. While this was prior to the existence of Megatech, Respondent Ahuja participated in the sale through his former employer. *(Agency Exhibits 7, 9).*

26. Once Megatech became MTS System's sole representative in the region, Respondents began to negotiate sales on behalf of MTS. In particular, on March 28, 1991, Respondent Ahuja sent a facsimile to MTS regarding a proposed sale of MTS regarding a proposed sale of MTS equipment to be used at IGCAR. *(Agency Exhibit 9).*

27. Following the sales proposal, Respondent Ahuja attended a meeting with several scientists from IGCAR on June 5, 1991. *(Agency Exhibits 7, 10).* At this meeting, the participants discussed IGCAR's specific needs and restrictions pertaining to the MTS equipment. However, until MTS determined whether a license was required to export items to IGCAR, the project remained at a standstill. *(Agency Exhibits 10–11).*

28. In the meantime, Megatech continued to provide service on the old system installed at IGCAR. *(Agency Exhibits 7, 15).* Respondent Shettigar was the primary service engineer to visit IGCAR on two separate occasions in 1993 and 1998. *(Agency Exhibits 7, 16).*

Export Restrictions Imposed on Transactions With IGCAR

29. On January 13, 1992, MTS employees sent a facsimile to Respondent Ahuja in India regarding authorization to export goods to IGCAR. In particular, MTS received a response to an inquiry with the Department of Commerce, stating ''no one will be allowed to ship goods to IGCAR.'' The prohibition pertained to the USA, UK, Japan, and most other industrialized nations. *(Agency Exhibit 12).* However, MTS informed Megatech they would continue to appeal the decision through their legal office in Washington. *(Agency Exhibit 12).*

30. In the meantime, MTS continued to apply for license applications to export controlled testing equipment to IGCAR. Applications filed in February 1992 and May 1994 were both rejected by BIS, U.S. Department of Commerce. *(Agency Exhibits 13, 18).*

31. On April 22, 1993, Respondent Ahuja requested assistance from a subsidiary of MTS in obtaining an export license to supply test equipment to IGCAR. Respondent Ahuja's facsimile

[6] Pursuant to the Export Administration Regulations, ''end-user'' is defined in part as the person abroad that receives and ultimately uses the exported items. The end-user is not a forwarding agent or intermediary but may be the purchaser or ultimate consignee. *See* CFR 772.1.

noted the equipment would be used by Dr. K.B. Rao in the Material Development Laboratory at IGCAR.[7] *(Agency Exhibit 14).* At all relevant times, Dr. K Bhanusankara Rao (Dr. K.B. Rao) was listed on IGCAR's general reference guide as associate director of the Mechanical Metallurgy Division within the Material Development Group. *(Agency Exhibit 5).*

32. Respondent Ahuja recognized that the chances for receiving a license were low but he proceeded with the sales proposal to IGCAR and submitted an offer. In turn, he requested assistance from MTS's subsidiary with completing the preliminary paper work. *(Agency Exhibit 14).* Information provided in Respondent Ahuja's facsimile included: (1) IGCAR listed as the facility name; and (2) Dr. Rao listed as the end user. *(Agency Exhibit 14).*

33. With MTS's inability to secure an export license, IGCAR turned to other manufacturers for their needed supplies. As a result, Megatech experienced a loss of potential business clients. *(Agency Exhibits 7, 17).*

34. In 1998, MTS received an official letter from the Department of Commerce informing them that IGCAR would require special export treatment due to their nuclear activities. *(Agency Exhibit 15).* Moreover, when IGCAR was placed on the Entity List, suppliers were notified that a license was required for any item sold to the listed entity; however, a license would most likely be denied. In fact, U.S. sanctions stated there is a ''presumption of denial'' for any Indian/Pakistani nuclear end-user. *(Agency Exhibit 15).*

35. Despite this awareness, Megatech continued to submit offers for every tender received from IGCAR, assuming that one day the U.S. Export Regulations would relax. *(Agency Exhibit 15).*

36. MTS repeatedly assured Megatech that all MTS subsidiaries and representatives were bound by U.S. Export Regulations. As such, MTS could not supply orders, spare parts, or warranty replacement parts to any customer on the Entity List without an export license. *(Agency Exhibit 19).*

Negotiations for the Sale of Equipment to IGCAR

37. In June 1999, Professor K.B. Rao contacted Megatech with specifications for a fatigue test system. *(Agency Exhibits 7–8).*

38. Although Professor Rao was listed as a faculty member on IGCAR's general reference guide, he asked Respondent Ahuja to meet him at the Indian Institute of Technology (IIT) in Chennai to further discuss the details of the order. *(Agency Exhibits 5, 7).*

39. Prior to the meeting, Respondent Ahuja sent an advance copy of Dr. Rao's specifications to MTS Systems, requesting an offer. Respondent Ahuja told MTS the request came from Professor K.B. Rao of IIT. *(Agency Exhibit 7).*

40. On July 28, 1999, Respondent Ahuja met with Dr. Rao. *(Agency Exhibit 7, 43).* At the meeting, Professor Rao reiterated his need for a fatigue test system and asked if Megatech could supply it. *(Agency Exhibit 8).* Based on Dr. Rao's specifications and concerns, Respondent Ahuja made an initial offer. *(Agency Exhibits 7, 8, 41).*

41. Discussions continued for several months through subsequent meetings and written communications. *(Agency Exhibits 8, 44).* All correspondence between Megatech and Professor Rao were addressed to the Indian Institute of Technology. *(Agency Exhibits 8, 44).*

42. On August 13, 1999, a new company was introduced into the negotiation process when Respondent Ajuha met Dr. Rao at the office of MassSpec Technologies Pvt. Ltd. (MassSpec) in Mumbai. *(Agency Exhibits 42, 43).* According to Respondent Ahuja, MassSpec is IIT's counterpart. *(Agency Exhibit 45).*

43. Two associates of Professor Rao also attended, Dr. M. Valsan and Mr. R.K. Chodankar. *(Agency Exhibits 42–43).* At all relevant times, Dr. M. Valsan was a scientist at IGCAR in the Mechanical Metallurgy Division. *(Agency Exhibit 6).* However, at this meeting, Dr. Valsan attended in the capacity of an employee of MassSpec. *(Agency Exhibit 43).* Mr. R.K. Chodankar attended in the capacity of MassSpec's owner. *(Agency Exhibits 8, 43).*

44. On October 21, 1999, Respondent Ahuja informed MTS employees the purchase order would not be placed by MassSpec, instead of IIT. In his e-mail to MTS, Respondent Ahuja explained that MassSpec was a private entity that would obtain a tax benefit if it purchased the equipment directly rather than give IIT the funds to place the order. *(Agency Exhibit 45).* However, the system would still be used by Professor Rao at IIT. *(Agency Exhibits 8, 45).*

45. On October 21, 1999, Respondent Ahuja e-mailed MTS to request the removal of all costs associated with MTS personnel visits. *(Agency Exhibit 45).* According to Ahuja, MTS visits were unnecessary since the customer using the equipment would visit MTS's facility in the U.S. for a pre-shipment inspection. *(Agency Exhibit 45).* Similarly, MTS would train one of Megatech's engineers, who, in turn, would install the equipment and receive the customer's final on-site acceptance. *(Agency Exhibits 45, 47).*

46. Respondent T.K. Mohan assisted Respondent Ahuja with the negotiations. On November 5, 1999, Respondent Mohan e-mailed MTS employees to discuss technical inquiries and costs associated with the sale of the fatigue test system. *(Agency Exhibit 46).* Respondent Mohan's e-mail designated MassSpec (IIT) as the customer. *(Agency Exhibit 46).*

47. On April 6, 2000, Respondent Ahuja informed MTS that another change had been made to the transaction. The customer now wanted to place the order in the name of Technology Options (India) Pvt. Ltd. (Technology Options).[8] Technology Options is a sister company of MassSpec.[9] *(Agency Exhibits 7–8, 47).*

48. Mr. Chodankar, the owner of MassSpec, would continue to negotiate the deal on behalf of Technology Options, and Professor Rao would still be the person using the machine. *(Agency Exhibit 8).*

Parallel Discussions To Deliver Items to IGCAR

49. Although communications between Megatech and MTS characterized the transaction as a sale to Technology Options, parallel discussion between Respondent Ahuja and Dr. Rao revealed the fatigue test system would ultimately be delivered to IGCAR once it arrived in India. *(Agency Exhibit 48).*

50. On May 25, 2000, a price negotiation meeting was held at the Government of India Department of Atomic Energy, Madras Regional Purchase Unit (''Department of Atomic Energy'') to discuss the supply of a fatigue testing system. Notes from the meeting were signed by the attendees, who included: Dr. S.L. Mannan and Dr. K.B. Rao on behalf of IGCAR; two individuals from the Department of Atomic Energy; and Respondent Ahuja on behalf of MassSpec.[10] *(Agency Exhibit 48).*

[7] All departments and staff members are listed on IGCAR's general reference guide, published on the internet at *http:/www.igcar.ernet.in/.*

[8] Technology Options (India) Private Limited (''Technology Options'') was established on May 13, 1999 in Mumbai and represents foreign companies for the sale of advanced analytical instrumentation in India. *(Agency Exhibit 35).*

[9] In his deposition, Respondent Ajav Ahuja clarifies the meaning of ''sister companies.'' More specifically, Mr. Ahuja explains ''they are of the same group of companies; they are related companies who have a common director.'' *(Agency Exhibit 7).*

[10] No explanation was provided in the minutes as to why Respondent Ahuja signed on behalf of MassSpec rather than on behalf of Megatech. *(Agency Exhibit 48).*

51. At all relevant times, the Department of Atomic Energy was located at 26 Haddows Road, Chennai, India. *(Agency Exhibit 48).*

52. At the meeting, the representatives from the Department of Atomic Energy indicated that the Department planned to place an order with Respondent Ahuja for the delivery of one fatigue test system. *(Agency Exhibit 48).* In turn, Respondent Ahuja agreed to provide training for one engineer at the supplier's facility. *(Agency Exhibit 48).*

53. Respondent Ahuja requested that the Department of Atomic Energy submit a Letter of Intent on or before June 6, 2000 to officially place the order with MTS. *(Agency Exhibit 48).*

54. On June 6, 2000, Mr. Chodankar of ITT wrote to MTS requesting the fatigue test system. *(Agency Exhibit 49).* Mr. Chodankar's letter clarifies that the order was placed pursuant to MTS's offer and subsequent meeting with Mr. Ajay Ahuja of Megatech. *(Agency Exhibit 49).*

Negotiations for the Sale of a Second MTS Machine

55. Concurrent with the discussions regarding the fatigue test system, Megatech discussed the shipment of a second machine. *(Agency Exhibit 61).* This time, the order was for a universal testing system to be placed by Technology Options. *(Agency Exhibits 35, 61).*

56. Respondent Mohan was the principal representative involved in the negotiations. *(Agency Exhibit 61).* On December 22, 2000, Respondent Mohan e-mailed MTS employees with inquiries regarding pricing, delivery, and contractual obligations for the universal testing machine. *(Agency Exhibit 61).*

57. Attached to the e-mail was a purchase order and sales form completed by Respondent Mohan. *(Agency Exhibit 61).* The ''Ship-to'' category on the form was left blank, while the ''Site'' and ''Sold-to Customer'' sections listed Technology Options in Mumbai. *(Agency Exhibit 61.*)

IGCAR Representatives Visit MTS Facilities in Training

58. In November 2000, Dr. K.B. Rao and Respondent Ravi Shettigar visited the MTS facilities in the United States to inspect the fatigue test system and be trained on installation prior to shipment. *(Agency Exhibits 41–42).*

59. Before they could enter the United States, both Dr. Rao and Respondent Shettigar needed visas approved by the U.S. Consulate. To assist with the visa process, MTS drafted letters of invitation to explain the purpose of the visit. *(Agency Exhibits 7, 53–54).* The information contained in those letters was provided directly by Respondents Mohan and Shettigar. *Agency Exhibits 43, 53–54, 56–57).*

60. Respondents Mohan and Shettigar informed MTS that Dr. Rao was the Senior General Manager of Technology Options. *(Agency Exhibits 43, 56–57).*

Sale and Delivery of the Fatigue Testing System

61. On June 8, 2000, Respondent Ahuja submitted a sales order form to MTS regarding the sale of the fatigue test system. *(Agency Exhibit 50).* On the form, Respondent Ahuja listed Technology Options as the customer and Mumbai as the location site. *(Agency Exhibits 43, 50).*

62. Subsequently, on June 23, 2000, the Department of Atomic Energy placed an order on behalf of IGCAR with Technology Options for the fatigue test system. The order form contained the terms previously discussed at the meeting held on May 25, 2000 between Dr. K.B. Rao and Respondent Ahuja. *(Agency Exhibit 28).* In particular, the machine would be delivered and installed at IGCAR's facility; training would be provided for the operating scientists without additional costs. *(Agency Exhibit 28).*

63. On December 31, 2000, Megatech was notified the fatigue test system arrived at Chennai. *(Agency Exhibit 8).*

64. Shortly, thereafter, in January of 2001, Mr. Chodankar of Technology Options called Megatech to perform an inventory check to ensure that all components were shipped from MTS. *(Agency Exhibits 7–8).*

65. Respondent Shettigar performed the required check at the customer's facility in Chennai. *(Agency Exhibits 7–8, 56).* More specifically, this inventory check took place at 26 Haddows Road. *(Agency Exhibit 43).* This is the formal address of the Department of Atomic Energy and the same location at which Respondent Ahuja attended a meeting with IGCAR officials on May 25, 2000. *(Agency Exhibits 28–30).*

66. On January 22, 2001, Respondent Shettigar exchanged several e-mails with MTS employees regarding the installation of the fatigue test system. *(Agency Exhibit 64).* In his e-mail, Shettigar informs MTS that he visited the customer's site to open the crates but the customer was not ready for the pre-installation check. He further noted the customer would not be ready for the final installation until sometime in the last week of February. *(Agency Exhibit 64).*

Investigation by Bureau of Industry and Security

67. On August 21, 2000 and February 13, 2001, the Agency received two anonymous letters alleging violations of the export regulations by IGCAR and other Indian organizations on the Entity List. *(Agency Exhibit 21).* The letters alleged that MTS, Megatech, MassSpec, and Technology Options were among the companies involved in such activities. *(Agency Exhibit 21).* As a result of the letters, BIS opened an investigation to determine the veracity of the allegations. *(Agency Exhibits 21, 25).*

68. On February 27, 2001, Special Agents met MTS employees to review recent exports to India. *(Agency Exhibit 26).* MTS volunteered to review their sales and narrow the transactions down to a small group that the Agency could review. *(Agency Exhibit 26).*

69. On March 9, 2001, MTS notified BIS it discovered a purchase order for equipment that shipped to Technology Options on 12/19/00, and a second order being prepared for shipment at the end of the month. *(Agency Exhibits 27, 32).*

70. On June 7, 2001, the universal testing machine was formally detained by BIS's Office of Export Enforcement. *(Agency Exhibit 33).*

71. On June 11, 2001, BIS requested U.S. Foreign Commercial Service officers in Mumbai to conduct a Post Shipment Verification (PSV) at Technology Options. The results of the PSV determined the fatigue test system was neither present at Technology Option's facility nor under its control. *(Agency Exhibits 34–35).*

72. On May 6, 2002, Respondent Ahuja met with Commercial Service Officers. *(Agency Exhibit 38).* At this meeting, Megatech viewed several documents evidencing the diversion of the fatigue test system to IGCAR. *(Agency Exhibit 38).* At the Agency's request, Respondent Ahuja agreed to visit IGCAR to confirm whether the machine was installed and in use at IGCAR's facility. *(Agency Exhibits 8, 38).*

73. On May 8, 2002, Megatech representatives visited IGCAR and saw the fatigue test system in use at the Materials Development Lab. *(Agency Exhibits 8, 38–39).* Pursuant to their agreement, Megatech conveyed this information to the U.S. Foreign Commercial Service. *(Agency Exhibits 8, 38–39).*

74. On November 4, 2003, Commercial Service Agents conducted an end-use check at IGCAR and viewed the fatigue test system. *(Agency Exhibit*

40). The team met with IGCAR faculty members to review documents pertaining to the purchase of the system. One document in particular listed all companies that bid on the tender, including a bid from MassSpec Technologies in Mumbai, dated March 2, 2000. *(Agency Exhibit 40).*

Ultimate Recommended Findings of Fact and Conclusions of Law

1. Respondents and the subject matter of this case are properly within the jurisdiction of the Bureau of Industry and Security in accordance with the Export Administration Act of 1979 (50 App. U.S.C. 2401–2420) and the Export Administration Regulations (15 CFR parts 730–774).

2. The evidence in the record as a whole demonstrates that Respondents Megatech, Ajay Ahuja, Ravi Shettigar, T.K. Mohan conspired to export items subject to the Regulations to a person listed on the Entity List without BIS authorization.

3. The charge of conspiracy, in violation of 15 CFR 764.2(d), against Respondents Megatech, Ajay Ahuja, Ravi Shettigar, and T.K. Mohan alleging Respondents conspired to export a thermal mechanical fatigue test system and a universal testing machine from the United States to the IGCAR without the required license is *proved* by a preponderance of reliable and credible evidence as taken from the record considered as a whole.

4. The first offense under the charge of evading the Regulations, in violation of 15 CFR 764.2(h), alleging Respondents Megatech, Ajay Ahuja, Ravi Shettigar, and T.K. Mohan developed and employed a scheme by which a company in India not on the Entity List would receive that fatigue test system from the United States and then divert it to the true ultimate consignee, IGCAR, is *proved* by a preponderance of reliable and credible evidence as taken from the record considered as a whole.

5. The second offense under the charge of evading the Regulations, in violation of 15 CFR 764.2(h), alleging Respondents Megatech, Ajay Ahuja, Ravi Shettigar, and T.K. Mohan developed and employed a scheme by which a company in India not on the Entity List would receive the universal testing system from the United States and then divert it to the true ultimate consignee, IGCAR, is *proved* by a preponderance of reliable and credible evidence as taken from the record considered as a whole.

6. The charge of false statements in the course of an investigation subject to the Regulations, in violation of 15 764.2(g), against Respondents Megatech and Ajay Ahuja is *not proved.* Therefore, the Administrative Law Judge recommends that those charges (violations of 15 CFR 764.2(g)) alleged against Respondents Megatech and Ajay Ahuja be dismissed.

Discussion

The Export Administration Act and the supporting Export Administration Regulations provide broad and extensive authority for the control of exports from the United States. *See* 50 App. U.S.C. 2402(2)(A); 2404(a)(1); 2405(a)(1); *see also* 15 CFR 730.2. More specifically, the Act authorizes the prohibition and regulation of exported goods for the purpose of furthering U.S. foreign policy or fulfilling international obligations. *See* 50 App. U.S.C. 3405(a)(1). This includes authority to regulate and prohibit the export of goods and technology in the interest of national security. *See* 50 App. U.S.C. 2402(2)(A) and 2404(a)(1). Moreover, all U.S. origin items, wherever located, are subject to regulations. *See* 15 CFR 734.3(a)(2). As such, the governing regulations apply extraterritorially regardless of a person's nationality or locality, so long as U.S. origin items are involved. *In the Matter of Abdulmir Madi, et al.* 68 FR 57406 (October 3, 2003).

The burden in this proceeding lies with the Bureau of Industry and Security to prove the changes instituted against the Respondents by a preponderance of the evidence. *In the Matter of Petrom GmbH International Trade,* No. E891 (BIS Apr. 25, 2005), *http://efoia.bis.doc.gov/ExportControlViolations/TOCExportViolations.htm; In the Matter of Abdulmir Madi, et al.,* 68 FR 57406 (October 3, 2003).[11] In an administrative proceeding, the preponderance of the evidence standard is demonstrated by reliable, probative, and substantial evidence. *Steadman* v. *SEC*, 450 U.S. 91, 102 (1981). In the simplest terms, the Agency must demonstrate that the existence of a fact is more probable than its nonexistence. *Concrete Pipe & Products* v. *Construction Laborers Pension Trust,* 508 U.S. 602, 622 (1993); *In the Matter of Petrom GmbH International Trade,* No. E891 (BIS Apr. 25, 2005), *http://efoia.bis.doc.gov/ExportControlViolations/TOCExportViolations.htm.*

In this case, Respondents are charged with violations of the Export Administration Regulations (EAR) occurring from April 1, 2000 through August 31, 2001. The EAR governs the export of goods with dual-use and is administered by the Bureau of Industry and Security under the authority of the Export Administration Act.[12] 50 App. U.S.C. 2401–2420; 15 CFR 730.2. In an attempt to prevent dual-use items from falling into the wrong hands, the EAR prescribe a complex set of regulations, which are triggered depending on the type of item sought to be exported, the destination of the item, and the specific entity or person who receives it. 15 CFS 732.1. In turn, specific conduct constitutes a violation of the EAR to which sanctions may be imposed. *See* 15 CFR 764.1.

In particular, it is unlawful to conspire, or act in concert, with one or more persons to take any action that violates the Act or its underlying regulations. 15 CFR 764.2(d). Similarly, it is unlawful to engage in any transaction, or to take any action, with the intent to evade the provisions of the Act or its regulations. 15 CFR 764.2(h). In these proceedings, knowledge includes positive knowledge that a circumstance exists. However, knowledge also includes an awareness of the high probability that a circumstance will occur. 15 CFR 772.1. Such awareness may be inferred from evidence of the conscious disregard of facts known to a person. Likewise, awareness may be inferred from a person's willful avoidance of facts. *Id.*

Finally, a person is prohibited from misrepresenting and concealing facts to an official of any United States Agency in the course of an investigation subject to the Regulations. *See* 15 CFR 764.2(g)(i). Misrepresentation and concealment of facts are defined in part as making any false or misleading representation, statement, or certification. *See* 15 CFR 764.2(g). Prohibited actions further include falsifying or concealing a material fact. *See* 15 CFR 764.2(g).

In this case, the Agency charged Respondents Megatech and Ahuja with misrepresentation and concealment of facts in the course of an investigation. More specifically, BIS alleges that between August 16, 2001 and May 20, 2002, Respondents Megatech and Ahuja made false statements to the U.S. government regarding the export of a fatigue test system to IGCAR. The alleged misrepresentations are derived from statements made to U.S. Commercial Service Agents who met with Respondent Ahuja at the Megatech office on April 19, 2002. The details of

[11] Bureau of Industry and Security publishes Decisions and Orders pertaining to export violations on its Web site, located at *http://efoia.bis.doc.gov/ExportControlViolations/TOCExportViolations.htm.*

[12] 50 App. U.S.C. 2401–2420; 15 CFR 730.2.

that meeting were recapped by Special Agent Richard Rothman in an e-mail sent to another Agency official. Agency Exhibit 37.

According to Special Agent Rothman's E-mail, Respondent Ahuja stated he was first introduced to Technology Options by an IIT professor. Afterwards, the only persons with whom he negotiated at Technology Options was Mr. R.K. Chodankar. Similarly, Respondent Ahuja stated he did not meet Dr. K.B. Rao until after the fatigue test system was shipped from the United States in December 2000. Special Agent Rothman additionally notes that Respondent Ahuja claimed he was never educated on the important of U.S. export controls nor instructed by MTS to carefully investigate potential customers. Agency Exhibit 37.

The Agency alleges these statements are false because they contradict answers supplied by Respondents in subsequent Discovery Requests. However, a full review of the record reveals insufficient evidence to support a finding that Respondents made false statements or concealed facts during the course of the investigation.

In this case, BIS relies on an E-mail generated by Special Agent Rothman as evidence of false statements made by Respondents Megatech and Ahuja. While this e-mail purports to summarize a meeting between Respondent Ahuja and Agent Rothman, BIS presented no further evidence detailing the interview. In my opinion, this E-mail is susceptible to double interpretation, and I am not convinced of its accuracy.

From the start, Agent Rothman notes that his report is written without the input of Agent Srinivas who accompanied him on the interview. He further notes that if anything is missing or misstated, Agent Srinivas can provide clarification. Agency Exhibit 37. However, neither confirmation nor clarification is provided by Agent Srinivas in the record. While the Agency is under no obligation to provide this information, without it, the credibility of this E-mail is weak.

Of particular concern, incorrect information is contained within the body of Agent Rothman's e-mail. For example, Rothman writes, ''On Friday afternoon, Srinivas and I met with Ajay Ahuja and his senior manager Ravi Shettigar of Megatech.'' Agency Exhibit 37. According to the bulk of evidence provided in the record, Respondent Shettigar is not a senior manager but, rather, a service engineer. Agency Exhibits, 7, 8, 56. When this e-mail is read in conjunction with other exhibits, it is unclear as to what Respondent Shettigar's role is at Megatech. Is he senior manager over Respondent Ahuja or is he the senior manager of Megatch's service engineer department? Did Agent Rothamn simply misstate Respondent Shettigar's title or did Respondents provide incorrect answers? This information is crucial when determining whether employees shared knowledge of each other's actions. If the Agency chooses to rely on a single piece of evidence as its basis of proof, the contents of that evidence must be unequivocal.

Moreover, given the informal nature of E-mail, I am hesitant to apply significant weight to this exhibit. Unlike an official report, e-mails are often written in haste and tend to paraphrase events. The E-mail written by Agent Rothman is a short summary of his interview with Respondent Ahuja, which briefly restates the conversation that transpired during the meeting. There is no credible and substantial evidence in the record of what information was actually conveyed during the interview. From this exhibit alone, it is impossible to determine what words were actually used by either the Agents or Respondent Ahuja. Similarly, it is uncertain whether Respondent Ahuja fully understood the questions being asked or if the interview was complicated by a language barrier. Likewise, did the Agent fully comprehend Respondent Ahuga's answers? When an interview of this magnitude is simply paraphrased in an e-mail, rather than transcribed or, at the very least, notarized, it is determinate whether assertions made by an individual were misstated or taken out of context.

In addition, it is important to note that Agent Rothman's e-mail was written in response to a co-worker's inquiry of a previous e-mail from Agent Srinivas. The co-worker wrote, ''I was going by Sriniva's e-mail where he said Rao was asked to ''float a company'' and import all the equipment for an IGCAR test center. Is that what Rao told Srinivas?'' Agency Exhibit 37. In turn, Agent Rothman drafted his report to recap the details of his meeting with Respondent Ahuja. As such, the e-mail describes Respondent Ahuja's statements in the interview and contains minimal reference to Rao. Likewise, there is no mention of Rao stating he was asked to ''float at company.''

In reviewing this e-mail chain, it is unclear why Agent Rothman focuses on Respondent Ahuja statements when his co-worker's inquired about Rao. Did the co-worker misunderstand the original correspondence from Agent Srinivas or are there additional e-mails that were a part of this chain but not included in the record? With these questions in mind, I find the reliability of this exhibit to be minimal. More importantly, the information provided within it is inadequate to establish whether Respondents made misleading representations or concealed facts. Therefore, the Agency failed to prove by a preponderance of the reliable and credible evidence that Respondents Megatech and Ahuja wrongfully made false statements during the course of an investigation.

However, the Agency successfully established that Respondents conspired to export goods to a person listed on the Entity List without the required authorization. Likewise, Respondents committed acts of evasion when they developed and employed a scheme in which a company in India not on the Entity List would receive the items from the United States and then divert them to the true consignee, IGCAR.

In defense of their actions, Respondents raise the following argument, which will be addressed in further detail:

1. Respondents did not Know They were Dealing with IGCAR Representatives nor Intended Controlled Items to be Re-Exported to a Prohibited Entity.

For the reasons stated herein, Respondent's argument is rejected.

1. *Respondents Knew They were Dealing with IGCAR Representatives and Intended to Divert Controlled Items to a Prohibited Entity*.

The Agency alleges Respondents conspired with others to export high-tech testing equipment from the United States to IGCAR, an entity in India that is prohibited to receive these items without the required license. In furtherance of the conspiracy, Respondents met and engaged in various correspondences with their co-conspirators, reaching an agreement to acquire the equipment without proper authorization. BIS further contends that Respondents developed and employed a scheme by which front companies in India would receive the exported equipment and then divert it to IGCAR, the true ultimate consignee. According to the Agency, Respondent's actions were taken with the specific intent to evade export regulations and avoid the licensing requirements. BIS additionally contends Respondents were knowledgeable of the U.S. export control laws and knew, or should have known, that the items required a license before being exported to IGCAR. Respondents also knew that license applications for exports to this entity would likely be denied.

In their Answer to the Agency's Charging Letters, Respondents argue they did not know the machines would be diverted to IGCAR. Rather, Respondents contend they were a victim of a sophisticated scheme whereby IGCAR set up legitimate front companies through which it conducted all its negotiations. As such, Respondents assert they did not know they were dealing with anyone other than legitimate businesses that were not listed as prohibited entities under U.S. law. Respondents claim they never received any knowledge to the contrary and no red flags were raised that would cause them to distrust the information received.

Although Respondents filed an Answer to the Charging Letters on March 3, 2004, no further evidence was provided throughout the course of this proceeding to support their arguments. On November 7, 2006, it was presumed Respondents withdrew their Motion for Summary Judgment and waived their right to a hearing after they failed to respond to numerous pleadings and court orders. Similarly, Respondents failed to avail themselves of the opportunity to submit a Memorandum and Submission of Evidence to Supplement the Record. As such, the only evidence in the record as to what transpired in this matter is provided by the Agency. This evidence refutes Respondents' claim they lacked knowledge and intent to evade the Regulations when they diverted controlled items to a prohibited entity without a required license.

In particular, Respondents' familiarity and knowledge of IGCAR representatives dates as far back as the 1980's. More specifically, when MTS supplied a machine to IGCAR around 1985, Respondent Ahuja participated in the sale through his former employer. *See* Agency Exhibits 7, 9. Once Megatech became MTS System's sole representative in the region, Respondents began to negotiate additional sales on behalf of MTS. For instance, in June 1991, Respondent Ahuja attended a meeting with several scientists from IGCAR to discuss the sale of equipment that would be used at IGCAR's facility. Agency Exhibit 9. Although the project remained at a standstill until a license could be obtained, Respondents continued to provide support service on the old system installed at IGCAR. Agency Exhibits 10, 11, 15. In providing the support service, Respondent Shettigar personally visited IGCAR on at least two separate occasions in 1993 and 1998. *See* Agency Exhibits 7, 16.

Although the likelihood of obtaining an export license grew increasingly difficult, Respondents continued to submit offers to IGCAR for the supply of test equipment. In April 1993, Respondent Ahuja requested assistance from an MTS subsidiary to complete the preliminary paperwork for a sale's proposal, Agency Exhibit 14. In his request letter, Respondent Ahuja noted the equipment would be used by Dr. K.B. Rao in the Material Development Laboratory at IGCAR. *Id.* Further, Respondents kept track of their clients' information over the years through a database, which filed the names of all companies and customers to whom products were sold. Agency Exhibit 7.

While Respondents continued their sales efforts, they knew U.S. regulations prevented the export of items to IGCAR without a license. Similarly, Respondents were aware that license applications would most likely be denied. In particular, Respondents' knowledge of U.S. export restrictions began in 1992 when their U.S. supplier notified them of the difficulty in obtaining authorization to export goods to IGCAR. MTS received a response to an inquiry with the Department of Commerce, stating ''no one will be allowed to ship goods to IGCAR.'' In turn, MTS sent a facsimile to Respondent Megatech informing them that the prohibition pertained to the USA, UK, Japan, and most other industrialized nations. *See* Agency Exhibit 12.

Moreover, on February 3, 1997, BIS established the Entity List comprised on end-users that were ineligible to receive specified items without a license. As a result, all exporters were put on notice that a validated license was required before any item subject to the Regulations could be exported to a listed entity. IGCAR was specifically included on the list due to its involvement in unsafeguarded nuclear research and development activities. 62 FR 125 (June 30, 1997). The following year, this information was reiterated when MTS received an official letter for the Department of Commerce informing them that IGCAR would require special export treatment due to their nuclear activities. Agency Exhibit 15. The letter additionally noted there was a ''presumption of denial'' for any Indian/Pakistani nuclear end-user. *Id.* In turn, MTS repeatedly assured Respondent Megatech that all MTS subsidiaries and representatives were bound by U.S. Export Regulations. As such, they could not supply orders, spare parts, or warranty replacement parts to any customer on the Entity List without an export license. Agency Exhibits 15, 19.

According to the evidence in record, Megatech grew increasingly frustrated with MTS's inability to secure a license to export items to entities in India. Without export authorization, Megatech experienced a loss of potential business clients. Agency Exhibits 7, 17. To combat this loss, Megatech continued to submit sales proposals to IGCAR. In June 1999, Megatech met with Professor K.B. Rao to discuss specifications for a Thermal Mechanical Fatigue System. Agency Exhibits 7, 43. Prior to the meeting, Respondent Ahuja sent an advance copy of Dr. Rao's specifications to MTS Systems, requesting an offer in which he informed MTS the request came from Professor K.B. Rao of the Indian Institute of Technology. Agency Exhibit 7. In addition, Respondent Ahuja addressed all subsequent correspondence to Dr. Rao at the IIT. Agency Exhibits 8, 44. Given that Megatech maintains client information in its database, Respondent Ahuja knew, or should have known, that Professor Rao actually worked for IGCAR. As such, all communication regarding Dr. Rao should have included reference to IGCAR rather than IIT.

With the knowledge, they were dealing with IGCAR representatives, Respondents intentionally developed a plan to evade the Regulations. In particular, high-tech equipment was purchased by front companies that were not listed on the Entity List. Once these companies received the equipment from the United States, they diverted the goods to IGCAR. For instance, a new company was introduced into the transaction on August 13, 1999 when Respondent Ahuja met Dr. Rao at the office of MassSpec Technologies Pvt Limited. *See* Agency Exhibits 42, 43. Following the meeting, Respondent Ahuja informed MTS that the purchase order would no longer be placed by IIT but, rather, by MassSpec. Respondent Ahuja claimed MassSpec was IIT's counterpart that would receive a tax benefit if it purchased the equipment directly. Shortly thereafter, on April 6, 2000, Respondent Ahuja told MTS that yet another change has been made to the transaction. This time, the customer wanted to place the order in the name of Technology Options, a sister company of MassSpec. *See* Agency Exhibits 7–8, 47. However, Respondent Ahuja assured MTS the system would still be used by Professor Rao at IIT. *See* Agency Exhibits, 8, 45.

The diversion of goods was further developed when Respondent Ahuja declined routine services typically associated with the sale and installation of a fatigue test system. As seen on October 21, 1999, Respondent Ahuja

emailed MTS to request the removal of costs associated with MTS personnel visits to the customer in India. *See* Agency Exhibit 45. Instead, Respondent Ahuja suggested a representative from Technology Options visit MTS's facility in the U.S. for pre-shipment inspection. During this time, the customer would become familiar with how the equipment functioned and its features. *See* Agency Exhibit 45. Similarly, MTS would train one of Megatech's engineers, who, in turn, would install the equipment and receive the customer's final on-site acceptance. *See* Agency Exhibits 45, 47. With this new arrangement there would be no need for MTS to visit the customer's facility in India to ensure the machine was properly installed at the end-user's site.

In accordance with this new arrangement, Dr. K.B. Rao and Respondent Ravi Shettigar visited the MTS facilities in November 2000 to inspect the fatigue test system and be trained on installation prior to shipment. *See* Agency Exhibits 41–42. However, before they could enter the United States, both Dr. Rao and Respondent Shettigar needed visas approved by the U.S. Consulate. To assist with the visa process, MTS drafted letters of invitation to explain the purpose of the visit. *See* Agency Exhibits 7, 53–54. The information contained within those letters was false and was provided directly by Respondent's Mohan and Shettigar. Specifically, Respondents told MTS employees that Dr. K.B. Rao was the Senior General Manager of Technology Options. *See* Agency Exhibits 43, 56–57. Given Respondents' level of involvement with both IGCAR and Dr. Rao, Respondents knew, or should have known, that Dr. K.B. Rao was not an employee of Technology Options but, rather, an employee of IGCAR.

Although Respondents' communications to MTS characterized the transaction as a sale to Technology Options, parallel discussion between Respondent Ahuja and Dr. Rao revealed the fatigue test system would ultimately be delivered to IGCAR. *See* Agency Exhibit 48. The record reveals a price negotiation meeting occurred on May 25, 2000 at the Department of Atomic Energy to discuss the supply of a fatigue testing system. IGCAR is a subordinate entity of the Department of Atomic Energy. *See* Agency Exhibits 5, 40. Moreover, notes from the meeting were signed by the attendees, who included: Dr. S.L. Mannan and Dr. K.B. Rao on behalf of IGCAR; two individuals from the Department of Atomic Energy; and Respondent Ajay Ahuja. *See* Agency Exhibit 48.

At the meeting, the Department of Atomic Energy indicated it planned to place an order with Respondent Ahuja for the delivery of one fatigue test system. *See* Agency Exhibit 48. In turn, Respondent Ahuja agreed to provide training for one engineer at MTS's facility in the United States. *See* Agency Exhibit 48. As seen in November 2000, the person to visit MTS's facility for training was Dr. Rao from IGCAR. *See* Agency Exhibit 42.

Moreover, Respondent Ahuja requested the Department of Atomic Energy submit a Letter of Intent on or before June 6, 2000 to officially place the order with MTS. *See* Agency Exhibit 48. In accordance with Respondent Ahuja's request, a Letter of Intent was written and sent to MTS on June 6, 2000. However, the letter was not drafted by the Department of Atomic Energy but, rather, by Mr. Chodankar of ITT. *See* Agency Exhibit 49. In addition, Mr. Chodankar's letter clarifies that the order was placed pursuant to MTS's offer and subsequent meeting with Mr. Ahuja of Megatech. *See* Agency Exhibit 49.

Throughout the negotiation process, Respondent T.K. Mohan assisted Respondent Ahuja and personally took part in the plan to divert items to IGCAR. For instance, on November 5, 1999, Respondent Mohan e-mailed MTS employees to discuss technical inquiries and costs associated with the sale of the fatigue test system. *See* Agency Exhibit 46. However, Respondent Mohan's e-mail designated MassSpec (IIT) as the customer instead of IGCAR. *See* Agency Exhibit 46. Likewise, Respondent Mohan was the principal representative involved in the negotiations of a second machine to be purchased by Technology Options. *See* Agency Exhibits 35, 61. These negotiations involved the sale of a universal testing machine and ran concurrent with the discussions for the fatigue test system. *See* Agency Exhibit 61. To help facilitate the transaction, Respondent Mohan e-mailed MTS employees with inquiries regarding pricing, delivery, and contractual obligations for the universal testing machine. *See* Agency Exhibit 61. Attached to the e-mail was a purchase order and sales form completed by Respondent Mohan. *See* Agency Exhibit 61. In the sections entitled ''Site'' and ''Sold-to-Customer,'' Respondent Mohan listed Technology Options in Mumbai. However, no explanation was provided as to why the section entitled ''Ship-to'' was left blank. *See* Agency Exhibit 61.

In furtherance of the conspiracy, Respondent Shettigar also took actions to evade the Regulations and avoid licensing requirements. In particular, On January 22, 2001, Respondent Shettigar exchanged several e-mails with MTS employees regarding the installation of the fatigue test system. *See* Agency Exhibit 64. In his e-mail, Shettigar informed MTS that the system was placed at Technology Option's facility but that the customer was not fully ready for the pre-installation check. He further noted Technology Options would not be ready for the final installation until sometime in the last week of February. *See* Agency Exhibit 64.

In response to subsequent discovery requests from the Agency, Respondents identified the location of the site referred to in Respondent Shettigar's e-mail. More specifically, Respondents claim the inventory check took place at a warehouse in the ground floor at 26 Haddows Road, Chennai. *See* Agency Exhibit 43. However, this is the formal address of the Department of Atomic Energy and the same location at which Respondent Ahuja attended a meeting with IGCAR officials Dr. K.B. Rao and Dr. S.L. Mannan on May 25, 2000. *See* Agency Exhibits 28–30.

Finally, Respondents submitted false documentation to its supplier, which provided a party other than IGCAR was the ultimate consignee for the exported items. In particular, on June 8, 2000, Respondent Ahuja submitted a sales order form to MTS regarding the purchase of a fatigue test system. *See* Agency Exhibit 50. On the form, Respondent listed Technology Options as the customer and Mumbai as the location site. *See* Agency Exhibits 43, 50. However, the record reveals that the item was actually sold to IGCAR, located in Chennai. More specifically, on June 23, 2000, the Department of Atomic Energy placed an order on behalf of IGCAR with Technology Options for the fatigue test system. The order form contained the terms previously discussed at the meeting held on May 25, 2000 between Dr. K.B. Rao and Respondent Ahuja. *See* Agency Exhibit 28. In particular, the machine would be delivered and installed at IGCAR's facility and training would be provided for the operating scientists without additional costs. *See* Agency Exhibit 28.

In light of the above listed circumstances, Respondents' assertion they did not know they were dealing with IGCAR representatives is unavailing. Rather, the evidence provided in the record clearly establishes Respondents conspired to export high-tech equipment to IGCAR without the required authorization in violation of 15 CFR 764.2(d). Moreover, the evidence demonstrates Respondents

intentionally evaded the Regulations by developing a scheme to export controlled items to front companies that would receive the goods from the United States then divert them to IGCAR. As such, the Agency proved by a preponderance of reliable and credible evidence that Respondents violated 15 CFR 764.2(h).

Recommended Sanction

The Bureau of Industry and Security has authority to assess sanctions against individuals who violate the export regulations. *See* 15 CFR 764.3. Sanctions may include civil penalties, denial of export privileges, and revocation of export licenses. *See* 15 CFR 764.3. Here, the record shows Respondents did not apply for U.S. Government authorization to export high-tech testing equipment to IGCAR, an entity prohibited to receive these items without the required license. Instead, Respondents conspired with others to set up front companies that would receive the exported equipment and then divert them to IGCAR, the true ultimate consignee. In furtherance of the conspiracy, Respondents met and corresponded with their co-conspirators, reaching an agreement to acquire the equipment without proper authorization. Likewise, Respondents submitted false information and documentation to their supplier in the U.S., whereby they indicated a party other than IGCAR was the ultimate consignee for these items.

The record further demonstrates Respondents were provided notice of the U.S. restrictions against IGCAR and knew the items required a license before being exported to IGCAR. Because these items are useful in the development and production of nuclear weapons, Respondents knew a license application for export to IGCAR would most likely be denied. As such, the record demonstrates Respondents' actions were done with the express purpose and intent to evade U.S. export control laws.

There are no mitigating factors on the records that would justify a sanction lighter than the denial of export privileges. Further, the imposition of a civil penalty in this case may not be effective, given the difficulty in collecting payment against a party outside the United States. In light of the above circumstances, I find that Megatech Engineering & Sciences Pvt. Ltd, Ajay Ahuja, Ravi Shettigar, and T.K. Mohan have demonstrated a severe disregard for U.S. export control laws; therefore, a denial of U.S. export privileges for a period of fifteen (15) years against each Respondent is an appropriate sanction.

Wherefore,

Recommended Order

[Redacted Section]

[Redacted Section]

Accordingly, I am referring this Recommended Division and Order to the Under Secretary for review and final action for the agency, without further notice to the Respondent, as provided in 15 CFR 766.22.

Hon. Walter J. Brudzinski, Administrative Law Judge.

Done and dated this 1st day of October 2007, New York, NY.

Appendix A—In the Matter of: Megatech Engineering & Services Pvt. Ltd., et. al.

List of Exhibits

Agency Exhibits

1. **Federal Register,** Vol. 69, No. 230 (Dec. 1, 2004).
2. Letters (2x) Written to Mr. Mark Menefee, Director of the Office of Export Enforcement from Steve Clagett (Mar. 18, 2002 and May 1, 2002).
3. **Federal Register** Vol. 62, No. 125 (June 30, 1997).
4. The World Factbook Reference Material on India.
5. Reference Material on Indira Gandhi Centre for Atomic Research (IGCAR) from IGCAR's Internet Site.
6. Letter from M. Valsan of the Mechanical Metallurgy Division at IGCAR to Mr. Y. Bharat, MassSpec Technology Pvt. Ltd. (October 13, 1999).
7. Deposition of Ajay Ahuja (Oct. 19, 2004).
8. Megatech Engineering & Services Pvt. Ltd Answer to Agency's Charging Letter (Mar. 3, 2004).
9. Facsimile from Ajay Ahuja to Don Hall at IGCAR (Mar. 28, 1991).
10. Visit Report to IGCAR, drafted by Ajay Ahuja.
11. Memo from Gary Stewart to Save Santo (June 7, 1991).
12. Facsimile from Scott Anderson, Sintech, to Ajay Ahuja (Jan. 13, 1992).
13. License Application Report from Donald E. Hall.
14. Facsimile from Ajay Ahuja to Mark Prow at Sintech (Apr. 22, 1993).
15. Electronic Mails (3x) between Megatech employees and Don Hall (July 9, 1998 through July 13, 1998).
16. International Field Service Reports, Number 001457, and Field Activity Report.
17. Speed Post to MATS (Apr. 23, 1994).
18. Application Submitted by Don Hall to BXA, US Dept of Commerce (May 10, 1994).
19. Electronic Mail (5x) between Ajay Ahuja and Becky Scott (July 19, 1999 through July 27).
20. Electronic Mail (2x) from Becky Scott to BXA Agent, Regarding Export License Application (July 19, 1999).
21. Anonymous Letter to U.S. Department of Commerce, Regarding Export Violations (Aug. 21, 2000).
22. Report of Investigation Activity (Sept. 25, 2000).
23. Report of Investigation Activity (Nov. 16, 2000).
24. Electronic Mail (2x) Between Becky Scott and Randy Strop (Nov. 28, 2000–Nov. 29, 2000).
25. Anonymous Letter to U.S. Department of Commerce, Regarding Export Violations (Feb. 13, 2001).
26. Report of Investigation Activity (Feb. 27, 2001).
27. Bookmarks from the Desktop of Becky Scott, Containing Seven (7) Memos.
28. Purchase Order From, from the Department of Atomic Energy (June 23, 2000).
29. Customs Duty Exemption Certificate.
30. Custom Duty Exemption Cover Letter (Aug. 4, 2000).
31. Purchase Order (Nov. 15, 2000).
32. MTS Facsimile to Office of Export Enforcement.
33. Letter from Bureau of Export Administration (June 7, 2001).
34. Facsimile from Office of Export Enforcement, (June 11, 2001).
35. Unclassified Document from Department of Commerce (3 pages).
36. Unclassified Document from Department of Commerce (1 page).
37. Interagency Electronic Mails from the Bureau of Export Administration, Between Richard Rothman and Perry Davis (Apr. 19, 2002–Apr. 22, 2002).
38. Unclassified Document from Department of Commerce (1 page).
39. Letter from Ajay Ahuja to Richard Rothman, Commercial Consul & Trade Commissioner (May 20, 2002).
40. PSV Activity Report.
41. Electronic Mail (2x) Between Steve Trout and Ajay Ahuja (July 28, 1999–July 29, 1999).
42. Electronic Mail (2x) Between Ravi Shettigar and T.K. Mohan (Nov. 27, 2000–Nov. 28, 2000).
43. Respondents' Responses to Bureau of Industry and Security's First Requests for Admissions, Interrogatories, and Production of Documents (Oct. 4, 2004).
44. Letter from Steven Trout, MATS Applications Engineer, to Indian Institute of Technology (June 7, 2000).
45. Electronic Mail (7x) Between Ajay Ahuja and Steve Trout (Oct. 21, 1999–Oct. 27, 1999).
46. Electronic Mail (2x) Between Steve Trout and T.K. Mohan (Nov. 5, 1999–Nov. 10, 1999).
47. Electronic Mail (3x) Between Ajay Ahuja and MTS Employees (Apr. 6, 2000).
48. Minutes from Negotiation Meeting by Government of India Department of Atomic Energy Madras Regional Purchase Unit (May 25, 2000).
49. Letter from R.K. Chodankar of Technology Options with Purchase Order (June 6, 2000).
50. Sales Order Submittal Form–2000, submitted by Ajay Ahuja (June 8, 2000).
51. Letter of Invitation for Ravi Shettigar with Facsimile Coversheet (Oct. 10, 2000).
52. Facsimile from Technology Options (Aug. 18, 2000).
53. Electronic Mail (2x) Between Randy Strop and T.K. Mohan (Aug. 19, 2000).
54. Letter of Invitation from MTS with Facsimile Coversheet (Aug. 23, 2000).

55. Electronic Mail (5x) Between Ravi Shettigar and Randy Strop (Oct. 31, 2000–Nov. 6, 2000).
56. Deposition of Ravi Shettigar (Oct. 20, 2004).
57. Electronic Mail (3x) Between T.K. Mohan and Randy Strop (Nov. 15, 2000–Nov. 20, 2000).
58. Electronic Mail (2x) Between T.K. Mohan and Ravi Shettigar (Nov. 15, 2000).
59. Letter of Invitation from Karen Odash, International Coordinator, MATS (Nov. 16, 2000).
60. Letter from United States Department of State, Regarding Certificate of Visa Records of the Bureau of Consular Affairs with Attachments (Feb. 16, 2005).
61. Electronic Mail (3x) with Attachments (2x) from T.K. Mohan to Steve Trout (Dec. 21, 2000).
62. Customer's Declaration Form (Dec. 23, 2000).
63. Letter from Technology Options to the Lufthansa, Air Cargo Section (Jan. 2, 2001).
64. Electronic Mail (4x) between Ravi Shettigar and Randy Strop (Jan. 22, 2001–Jan. 30, 2001).

Appendix B

Notice to the Parties Regarding Review by the Under Secretary; Title 15—Commerce And Foreign Trade Subtitle B—Regulations Relating to Commerce and Foreign Trade Chapter VII—Bureau of Industry and Security, Department of Commerce Subchapter C—Export Administration Regulations Part 766—Administrative Enforcement Proceedings

15 CFR 766.22

Section 766.22 Review by Under Secretary.

(a) *Recommended decision.* For proceedings not involving violations relating to part 760 of the EAR, the administrative law judge shall immediately refer the recommended decision and order to the Under Secretary. Because of the time limits provided under the EAA for review by the Under Secretary, service of the recommended decision and order on the parties, all papers filed by the parties in response, and the final decision of the Under Secretary must be by personal delivery, facsimile, express mail or other overnight carrier. If the Under Secretary cannot act on a recommended decision and order for any reason, the Under Secretary will designate another Department of Commerce official to receive and act on the recommendation.

(b) *Submissions by parties.* Parties shall have 12 days from the date of issuance of the recommended decision and order in which to submit simultaneous responses. Parties thereafter shall have eight days from receipt of any responses(s) in which to submit replies. Any response or reply must be received within the time specified by the Under Secretary.

(c) *Final decision.* Within 30 days after receipt of the recommended decision and order, the Under Secretary shall issue a written order affirming, modifying or vacating the recommended decision and order of the administrative law judge. If he/she vacates the recommended decision and order, the Under Secretary may refer the case back to the administrative law judge for further proceedings. Because of the time limits, the Under Secretary's review will ordinarily be limited to the written record for decision, including the transcript of any hearing, and any submissions by the parties concerning the recommended decision.

(d) *Delivery.* The final decision and implementing order shall be served on the parties and will be publicly available in accordance with Sec. 766.20 of this part.

(e) *Appeals.* The charged party may appeal the Under Secretary's written order within 15 days to the United States Court of Appeals for the District of Columbia pursuant to 50 U.S.C. app. Sec. 2412(c)(3).

Certificate of Service

I hereby certify that I have served the foregoing Recommended Decision & Order via express mail courier to the following persons and offices:

Under Secretary for Export Administration, Bureau of Industry and Security, U.S. Department of Commerce, Room H–3839, 14th & Constitution Avenue, NW., Washington, DC 20230, Telephone: (202) 482–5301. (Via Federal Express).

John R. Masterson, Jr., Esquire, Chief Counsel for Industry and Security, Glenn Kaminsky, Esquire, Senior Attorney, Office of Chief Counsel for Industry and Security, U.S. Department of Commerce, Room H–3839, 14th Street & Constitution Avenue, NW., Washington, DC 20230, Telephone: (202) 482–5301. (Via Federal Express).

ALJ Docketing Center, 40 S. Gay Street, Room 412, Baltimore, Maryland 21202–4022, Telephone: (410) 962–7434. (Via Federal Express).

Megatech Engineering & Services Pvt. Ltd., PB #17652, A/2/10 Dongre Park, Chembur, Mumbai 400 074 INDIA. (Via Federal Express International).

Ajay Ahuja, Megatech Engineering & Services Pvt. Ltd., PB #17652, A/2/10 Dongre Park, Chembur, Mumbai 400 074 INDIA. (Via Federal Express International).

Ravi Shettigar, Megatech Engineering & Services Pvt. Ltd, PB #17652, A/2/10 Dongre Park, Chembur, Mumbai 400 074 INDIA. (Via Federal Express International).

T.K. Mohan, Megatech Engineering & Services Pvt. Ltd, PB #17652, A/2/10 Dongre Park, Chembur, Mumbai 400 074 INDIA. (Via Federal Express International).

Done and dated this 1st day of October, 2007, New York, NY.

Regina V. Maye,

Paralegal Specialist to the Administrative Law Judge.

[FR Doc. 07–5382 Filed 10–30–07; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Transportation and Related Equipment Technical Advisory Committee; Notice of Partially Closed Meeting

The Transportation and Related Equipment Technical Advisory Committee will meet on November 15, 2007, 9:30 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution & Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary of Export Administration with respect to technical questions that affect the level of export controls applicable to transportation and related equipment or technology.

Public Session

1. Welcome and Introduction.
2. Working Group Reports:

—Composite Working Group.
—Engine Hot Section—Combustors and Turbines.
—Helicopter Power Transfer Systems.
—Jurisdiction—17C—Interpretation 9.
—Flight Controls and Heads Up Displays.
—Inertial.
—Marine.

3. Comments from the Public.

Closed Session

4. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yspringer@bis.doc.gov* no later than November 8, 2007.

A limited number of seats will be available during the public session of the meeting. Reservations are not

accepted. To the extent time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via e-mail.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on October 23, 2007, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § 10(d)), that the portion of the meeting dealing with matters the disclosure of portion of the meeting dealing with matters the disclosure of which would be likely to frustrate significantly implementation of an agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Dated: October 25, 2007.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 07–5407 Filed 10–30–07; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with September anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: October 31, 2007.

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–4697.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b) (2007), for administrative reviews of various antidumping and countervailing duty orders and findings with September anniversary dates.

Initiation of Reviews:

In accordance with sections 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than September 30, 2008.

Antidumping Duty Proceedings	Period to be Reviewed
INDIA: Certain Lined Paper Products.	
A–533–843	4/17/06 - 8/31/07
Blue Bird India Ltd..	
Creative Divya.	
Exel India Pvt. Ltd..	
FFI International.	
Global Art India Inc..	
Kejriwal Exports.	
Kejriwal Paper Limited.	
M/S Super ImpEx.	
Magic International.	
Marigold ExIm Pvt. Ltd..	
Marisa International.	
Navneet Publications (India) Ltd..	
Pioneer Stationery Pvt. Ltd..	
Rajvansh International.	
Ria ImpEx Pvt. Ltd..	
Riddhi Enterprises.	
SAB International.	
TKS Overseas.	
Unlimited Accessories Worldwide.	
V. Joshi Co..	
LATVIA: Steel Concrete Reinforcing Bars.	
A–449–804	9/1/06 - 8/31/07
Joint Stock Company Liepajas Metalurgs.	
THE PEOPLE'S REPUBLIC OF CHINA: Certain Lined Paper Products[1].	
A–570–901	4/17/06 8/31/07
Hwa Fuh Plastics Co., Ltd./Li Teng Plastics (Shenzhen) Co., Ltd..	
Leo's Quality Products Co., Ltd./Denmax Plastic Stationery Factory.	
Watanabe Group (consisting of the following companies):.	
Watanabe Paper Products (Shanghai) Co., Ltd..	
Watanabe Paper Products (Linqing) Co., Ltd..	
Hotrock Stationery (Shenzhen) Co., Ltd..	
Shanghai Lian Li Paper Products Co., Ltd..	
THE PEOPLE'S REPUBLIC OF CHINA: Freshwater Crawfish Tail Meat[2].	
A–570–848	9/1/06 - 8/31/07
Anhui Tongxin Aquatic Product & Food Co., Ltd..	
Jingdezhen Garay Foods Co., Ltd..	
Shanghai Now Again International Trading Co., Ltd..	
Xiping Opeck Food Co., Ltd..	

Antidumping Duty Proceedings	Period to be Reviewed
Xuzhou Jinjiang Foodstuffs Co., Ltd..	
Yancheng Hi–King Agriculture Developing Co., Ltd..	
Countervailing Duty Proceedings.	
INDIA: Certain Lined Paper Products.	
C–533–844	2/13/06 12/31/06
Navneet Publications (India) Limited.	
Suspension Agreements.	
None..	

[1] If one of the above named companies does not qualify for a separate rate, all other exporters of certain lined paper products from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[2] If one of the above named companies does not qualify for a separate rate, all other exporters of freshwater crawfish tail meat from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia v. United States*, 291 F.3d 806 (Fed. Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 USC 1675(a)) and 19 CFR 351.221(c)(1)(I).

Dated: October 24, 2007.

Edward Yang,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–21453 Filed 10–30–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–863

Notice of Extension of the Final Results of Antidumping Duty New Shipper Review: Honey from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 31, 2007.

FOR FURTHER INFORMATION CONTACT: Erin C. Begnal or Michael Quigley; AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1442 and (202) 482–4047, respectively.

Background

On July 3, 2007, the Department of Commerce (''Department'') published the preliminary results of the new shipper review of the antidumping duty order on honey from the People's Republic of China for the period December 1, 2005, through June 30, 2006. *See Honey from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review*, 72 FR 36422 (July 3, 2007) (''*Preliminary Results*''). On September 25, 2007, the Department extended the final results by thirty days. *See Notice of Extension of the Final Results of Antidumping Duty New Shipper Review: Honey From the People's Republic of China*, 72 FR 54436 (September 25, 2007). The final results of this new shipper review are currently due by October 24, 2007.

Extension of Time Limits for Final Results

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.214(i)(1) require the Department to issue the preliminary results of a new shipper review within 180 days after the date on which the new shipper review was initiated and final results of a review within 90 days after the date on which the preliminary results were issued. The Department may, however, extend the deadline for completion of the final results of a new shipper review to 150 days if it determines that the case is extraordinarily complicated (19 CFR 351.214 (i)(2)).

The Department has determined that the review is extraordinarily complicated, as the Department must consider numerous arguments presented in the respondent's August 2, 2007, case brief and the petitioners' August 8, 2007, rebuttal brief. In particular, the Department needs more time to analyze specific sections of the Department's preliminary determination to apply adverse facts available to Shanghai Bloom, including whether Shanghai Bloom and its producer precluded the Department from verifying the accuracy of information they submitted on the record pertaining to corporate structure and sales negotiations. Based on the timing of the case, the final results of this new shipper review cannot be completed within the statutory time limit of 90 days. Accordingly, the Department is fully extending the time limit for the completion of the final results by 30 days from the extended October 24, 2007, deadline, to November 23, 2007, in accordance with section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2). This notice is published pursuant to sections 751(a)(2)(B)(iv) and 777(i)(1) of the Act.

Dated: October 23, 2007.

Gary Taverman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–21452 Filed 10–30–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Proposed Information Collection; Comment Request; BEES Please

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before December 31, 2007.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Barbara C. Lippiatt, (301) 975–6133 or at *blippiatt@nist.gov*

SUPPLEMENTARY INFORMATION:

I. Abstract

Over the last 13 years, the Building and Fire Research Laboratory of the National Institute of Standards and Technology (NIST) has developed and automated an approach for measuring the life-cycle environmental and economic performance of building products. Known as BEES (Building for Environmental and Economic Sustainability), the tool reduces complex, science-based technical content (e.g., over 400 material and energy flows from raw material extraction through product disposal) to decision-enabling results and delivers them in a visually intuitive graphical format. BEES Please is a voluntary program to collect data from product manufacturers so that the environmental performance of their products may be evaluated scientifically using BEES. NIST will publish in BEES an aggregated version of the data collected from manufacturers that protects data confidentiality, subject to manufacturer's review and approval. BEES measures environmental performance using the environmental life-cycle assessment approach specified in the International Organization for Standardization (ISO) 14040 series of standards. All stages in the life of a product are analyzed: Raw material acquisition, manufacture, transportation, installation, use, and recycling and waste management.

Economic performance is measured using the American Society for Testing and Materials (ASTM) standard life-cycle cost method, which covers the costs of initial investment, replacement, operation, maintenance and repair, and disposal.

II. Method of Collection

Data on materials use, energy consumption, waste, and environmental releases will be collected using an electronic, MS Excel-based questionnaire. An electronic, MS Word-based User Manual accompanies the questionnaire to help in its completion.

III. Data

OMB Control Number: 0693–0036.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations.
Estimated Number of Respondents: 30.
Estimated Time Per Response: 62 hours and thirty minutes.
Estimated Total Annual Burden Hours: 1,875.
Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 25, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–21371 Filed 10–30–07; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Billfish Certificate of Eligibility

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before December 31, 2007.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Margo Schulze-Haugen, (301) 713–2347 or *Margo.Schulze-Haugen@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Under the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et. seq.*), NOAA is responsible for management of the Nation's marine fisheries. In addition, NOAA must comply with the United States' obligations under the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971 *et. seq.*). A Certificate of Eligibility (COE) for Billfishes is required under 50 CFR part 635 to accompany all billfish, except for a billfish landed in a Pacific state and remaining in the state of landing. This documentation certifies that the accompanying billfish was not harvested from the Atlantic Ocean management unit (described on the NOAA model form), and identifies the vessel landing the billfish, the vessel's homeport, the port of offloading, and the date of offloading. The certificate must accompany the billfish to any dealer or processor who subsequently

receives or possesses the billfish. A standard form is not currently required to document the necessary information. An equivalent form may be used provided it contains all of the information required. The continuation of this collection is necessary to implement the Consolidated Highly Migratory Species Fishery Management Plan, whose objective is to reserve Atlantic billfish for the recreational fishery.

II. Method of Collection

Paper applications, electronic reports, and telephone calls are required from participants, and methods of submittal include Internet and facsimile transmission of paper forms.

III. Data

OMB Control Number: 0648–0216.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 200.

Estimated Time per Response: 20 minutes for initial completion of certificate and 2 minutes for subsequent billfish purchase record keeping.

Estimated Total Annual Burden Hours: 43.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 25, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–21373 Filed 10–30–07; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Implantation and Recovery of Archival Tags

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before December 31, 2007.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Heather Halter, (301) 713–2347, or *heather.halter@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Oceanic and Atmospheric Administration (NOAA) operates a program to implant archival tags in, or affix archival tags to, selected Atlantic Highly Migratory Species (tunas, sharks, swordfish, and billfish). The archival tags are miniature data loggers that acquire information about the movements and behavior of the fish. Persons catching tagged fish are exempted from other normally applicable regulations, such as immediate release of the fish, but must notify NOAA, return the archival tag or make it available to NOAA personnel, and provide information about the location and method of capture. The information obtained is used by NOAA in the formation of international and domestic fisheries policy and regulations.

The persons outside of NOAA who affix or implant archival tags must obtain prior authorization from NOAA and submit subsequent reports about the tagging of fish. NOAA needs the information to evaluate the effectiveness of archival tag programs, to assess the likely impact of regulatory allowances for tag recovery, and to ensure that the research does not produce undue mortality.

II. Method of Collection

Tags and associated information are mailed to NOAA.

III. Data

OMB Control Number: 0648–0338.

Form Number: None.

Type of Review: Regular submission.

Affected public: Individuals or households, business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 25.

Estimated Time per Response: 30 minutes for reporting on an archival tag recovery; 30 minutes for notification of planned archival tagging activity; and 1 hour for reports of archival tagging activity.

Estimated Total Annual Burden Hours: 17.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 25, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–21375 Filed 10–30–07; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 08–11]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 08–11 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: October 25, 2007.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY
WASHINGTON, DC 20301-2800

OCT 19 2007
In reply refer to:
I-07/011485-CFM

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 08-11, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Egypt for defense articles and services estimated to cost $75 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard J. Millies
Deputy Director

Enclosures:
1. **Transmittal**
2. **Policy Justification**
3. **Sensitivity of Technology**

Same ltr to:

House	Senate
Committee on Foreign Affairs	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Transmittal No. 08-11

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Egypt

(ii) Total Estimated Value:

Major Defense Equipment*	$10 million
Other	$65 million
TOTAL	$75million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 2 excess E-2C Airborne Early Warning (AEW) Command & Control aircraft, 2 excess spare T-56-A-425 engines, modifications, support equipment, spare and repair parts, publications and technical data, maintenance, personnel training and training equipment, U.S. Government and contractor engineering and logistics technical support services, and other related elements of logistics support.

(iv) Military Department: Navy (SBZ)

(v) Prior Related Cases, if any:
FMS Case SBJ - $194 million - 14Sep99
FMS Case SAY - $ 65 million - 26Mar90
FMS Case SAN - $ 35 million - 28Jun85
FMS Case SAM - $73 million - 15Aug83
FMS Case SAL - $450 million - 15Aug83

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached.

(viii) Date Report Delivered to Congress: OCT 1 9 2007

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Egypt - E-2C Airborne Early Warning Command & Control Aircraft

The Government of Egypt has requested a possible sale of 2 excess E-2C Airborne Early Warning (AEW) Command & Control aircraft, 2 excess spare T-56-A-425 engines, modifications, support equipment, spare and repair parts, publications and technical data, maintenance, personnel training and training equipment, U.S. Government and contractor engineering and logistics technical support services, and other related elements of logistics support. The estimated cost is $75 million.

This proposed sale would contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country that has been and continues to be an important force for political stability and economic progress in the Middle East. This sale is consistent with these U.S. objectives and with the 1950 Treaty of Mutual Cooperation and Security.

The Government of Egypt requires additional E-2C aircraft to strengthen AEW surveillance and enhanced command, control, and communications capabilities within its defense network. These aircraft will ensure enhanced fleet communications and interoperability. The Government of Egypt will have no difficulty absorbing the additional E-2C aircraft into its armed forces. The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractor will be Northrop Grumman Systems Corporation in Bethpage, New York. There are no offset agreements associated with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U. S. Government or contractor personnel in country.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 08-11

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The E-2C aircraft contains sensitive state-of-the-art technology. Some of the hardware, publications, performance specifications, operational capabilities, parameters, vulnerabilities to countermeasures, and software documentation are classified Secret. The radar system within the E-2C aircraft, AN/APS-145, is a legacy radar system that is not considered new technology. The classified information to be provided consists of that which is necessary for the operation, maintenance, and repair (through depot level) of the E-2C aircraft and its installed systems and related software. The information to be transferred has been previously provided to the EAF to support its ongoing E-2C AEW program.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon systems effectiveness or could be used in the development of a system with similar or advanced capabilities.

[FR Doc. 07–5399 Filed 10–30–07; 8:45 am]

BILLING CODE 5001–06–C

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12614–001]

Alaska Power & Telephone Company; Notice of Surrender of Preliminary Permit

October 24, 2007.

Take notice that Alaska Power & Telephone Company, permittee for the proposed Ninemile Hydroelectric Project, has requested that its preliminary permit be terminated. The permit was issued on October 11, 2006, and would have expired on September 30, 2009.[1] The project would have been located on the Salmon River, in the Prince of Wales-Outer Ketchikan Census Area in Ketchikan, Alaska.

The permittee filed the request on September 27, 2007, and the preliminary permit for Project No. 12614 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, part-day holiday that affects the Commission, or legal holiday as described in section 18 CFR 385.2007, in which case the effective date is the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–21389 Filed 10–30–07; 8:45 am]

BILLING CODE 6717–01–P

[1] Alaska Power & Telephone Company, 117 FERC ¶ 62,024.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER07–1287–000; ER07–1287–001]

Apple Group, LLC; Notice of Issuance of Order

October 25, 2007.

Apple Group, LLC (Apple) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy and capacity at market-based rates. Apple also requested waivers of various Commission regulations. In particular, Apple requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Apple.

On October 25, 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 Apple, should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing protests is November 26 2007.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Apple 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 Apple, 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 Apple's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–21481 Filed 10–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12631–001]

David R. Croft and Ellen D. McCarthy; Notice of Surrender of Preliminary Permit

October 24, 2007.

Take notice that David R. Croft and Ellen D. McCarthy, permittee for the proposed Willow Creek and Yuba Fish Flows Project, has requested that its preliminary permit be terminated. The permit was issued on April 21, 2006, and would have expired on March 31, 2009.[1] The project would have been located on the Yuba River and Willow Creek, in Yuba County, California.

The permittee filed the request on October 22, 2007, and the preliminary permit for Project No. 12631 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, part-day holiday that affects the Commission, or legal holiday as described in section 18 CFR 385.2007, in which case the effective date is the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–21390 Filed 10–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR08–1–000]

Enbridge Energy Company, Inc., Enbridge Energy, Limited Partnership; Notice of Petition for Declaratory Order

October 24, 2007.

Take notice that on October 18, 2007, Enbridge Energy Company, Inc. and Enbridge Energy, Limited Partnership (collectively Petitioners), pursuant to Rule 207(a)(2) of the Commission's Rules of Practice and Procedure, 18 CFR 385.207(a)(2) (2007), tendered for filing to the Commission a petition to issue a declaratory order approving the proposed tariff structure relating to the Southern Access Extension Pipeline. Because of the time-sensitive nature of this project, Petitioners respectfully request that the Commission act on this petition on or before February 1, 2008.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m Eastern Time November 16, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–21388 Filed 10–30–07; 8:45 am]

BILLING CODE 6717–01–P

[1] *David R. Croft and Ellen D. McCarthy,* 115 FERC ¶ 62,095.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER07–1263–000, ER07–1263–001, ER07–1263–00; Docket Nos. ER07–1264–000, ER07–1264–001, ER07–1264–002]

High Sierra Power Marketing, LLC; Sierra Power Asset Marketing, LLC; Notice of Issuance of Order

October 24, 2007.

High Sierra Power Marketing, LLC (High Sierra) and Sierra Power Asset Marketing, LLC (Sierra Power) filed applications for market-based rate authority, with accompanying tariffs. The proposed market-based rate tariffs provide for the sale of energy, capacity and ancillary services at market-based rates. High Sierra and Sierra Power also requested waivers of various Commission regulations. In particular, High Sierra and Sierra Power requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by High Sierra and Sierra Power.

On October 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 High Sierra and Sierra Power, should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing protests is November 19, 2007.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, High Sierra and Sierra Power are 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 High Sierra and Sierra Power, 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 High Sierra's and Sierra Power's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–21392 Filed 10–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

October 24, 2007.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP96–200–180.
Applicants: CenterPoint Energy Gas Transmission Co.
Description: CenterPoint Energy Gas Transmission Co. submits a negotiated rate agreement with Eagle Energy Partners I, LP as Appendix A.
Filed Date: 10/19/2007.
Accession Number: 20071019–0014.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 31, 2007.

Docket Numbers: RP08–24–000.
Applicants: El Paso Natural Gas Company.
Description: El Paso Natural Gas Company submits its Second Revised Sheet 29.01 to its FERC Gas Tariff, Second Revised Volume 1–A.
Filed Date: 10/16/2007.
Accession Number: 20071017–0105.
Comment Date: 5 p.m. Eastern Time on Monday, October 29, 2007.

Docket Numbers: RP08–25–000.
Applicants: SOUTHERN LNG, INC.
Description: Southern LNG, Inc submits its Second Revised Sheet 1 et al. to its FERC Gas Tariff, Original Volume 1.
Filed Date: 10/18/2007.
Accession Number: 20071019–0044.
Comment Date: 5 p.m. Eastern Time on Tuesday, October 30, 2007.

Docket Numbers: RP08–26–000.
Applicants: Natural Gas Pipeline Company of America
Description: Natural Gas Pipeline Company of America's petition for temporary waiver of certain provisions of FERC Gas Tariff, Sixth revised Volume 1 and request for expedited action.
Filed Date: 10/19/2007.
Accession Number: 20071023–0007.
Comment Date: 5 p.m. Eastern Time on Friday 26, 2007.

Docket Numbers: RP08–28–000.
Applicants: Transcontinental Gas Pipe Line Corp.
Description: Transcontinental Gas Pipe Line Corporation submits Second Revised Sheet 430 et al to FERC Gas Tariff, Third Revised Volume 1, to become effective 11/22/07.
Filed Date: 10/23/2007.
Accession Number: 20071024–0026.
Comment Date: 5 p.m. Eastern Time on Monday, November 5, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the

Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Acting Deputy Secretary.

[FR Doc. E7–21413 Filed 10–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 271–107]

Entergy Arkansas, Inc.; Notice of Application for Non-Project Use of Project Lands and Soliciting Comments, Motions To Intervene, and Protests

October 24, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No.:* 271–107.

c. *Date Filed:* October 11, 2007.

d. *Applicant:* Entergy Arkansas, Inc.

e. *Name of Project:* Carpenter-Remmel Project.

f. *Location:* On the Quachita River, in Hot Springs and Garland Counties, Arkansas. The project occupies 34.3 of U.S. Army Corps of Engineer lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Blake Hogue, Hydro Operations, Entergy Arkansas, Inc., 141 West County Line Road, Alvern, AR 72104, (501) 844–2197.

i. *FERC Contact:* Any questions on this notice should be addressed to Gina Krump, Telephone (202) 502–6704, and e-mail: Gina.Krump@ferc.gov.

j. *Deadline for filing comments, motions to intervene, and protest:* November 26, 2007.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request:* Entergy Arkansas, Inc. (Entergy) is seeking Commission approval to issue a permit to K&S Development Company for the construction of seven docks, totaling 28 slips and up to 500 feet of riprap along the shoreline within the Kelly Creek area of Lake Hamilton. The proposed facilities would serve the residents of a condominium development (Lakeside Gardens) located outside the project boundary. Minimal excavation and ground disturbance is proposed. All proposed work is consistent with Entergy's shoreline management plan and permitting guidelines.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. 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, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–21387 Filed 10–30–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

October 24, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 13025–000.

c. *Date filed:* September 19, 2007.

d. *Applicant:* Emerald People's Utility District.

e. *Name and Location of Project:* The proposed Fall Creek Dam Hydropower Project would be located on Fall Creek, a tributary of the Middle Fork Willamette River, near the City of Springfield, in Lane County, Oregon, on Fall Creek Dam which is administered by the U.S. Army Corps of Engineers.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant contact:* Mr. Richard Jackson-Gistelli, Power Resource Manager, Emerald People's Utility District, 33733 Seavey Loop Road, Eugene, Oregon 97405, Telephone: 541–746–1583.

h. *FERC Contact:* Tom Papsidero, (202) 502–6002.

i. Deadline for filing comments, protests, and motions to intervene: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–13025–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Competing Application:* Project No. 12778–001, Date Filed: March 12, 2007, Date Issued: June 21, 2007, Due Date: August 20, 2007.

k. *Description of the Proposed Project:* The proposed Fall Creek Dam Hydropower Project, utilizing the existing U.S. Army Corps of Engineers' Fall Creek Dam and reservoir, would consist of: (1) A proposed intake structure, (2) a proposed steel penstock, (3) a proposed powerhouse containing three generator units with an installed capacity of 10.0 megawatts, (4) a proposed 450-foot-long, 12.5–kV or 37.5–kV transmission line, and (5) appurtenant facilities. The project would have an annual generation of 18.5 GWh.

l. *Location of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

o. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; See 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

p. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

q. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–21391 Filed 10–30–07; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0038; FRL–8154–3]

Computer Sciences Corporation; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be transferred to Computer Sciences Corporation in accordance with 40 CFR 2.307(h)(3) and 2.308(i)(2). Computer Sciences Corporation has been awarded multiple contracts to perform work for OPP, and access to this information will enable Computer Sciences Corporation to fulfill the obligations of the contract.

DATES: Computer Sciences Corporation will be given access to this information on or before November 5, 2007.

FOR FURTHER INFORMATION CONTACT: Felicia Croom, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–0786; e-mail address: *croom.felicia@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2007–0038. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Drive Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. Contractor Requirements

Under Contract No.EP-W-07-016, under this contract number, the contractor shall review, evaluate, and assess data to ensure that all information requirements are met, with respect to compliance with EPA guidelines and policies, and determine the adequacy of the study methods, data, and reporting, to support the claims and statements on the product label. The contract shall also conduct reviews in accordance with all guidance received at meeting with the Agency; with all guidelines, templates, instructions, and resourced indicated by the Agency; and with any other legitimate technical directions. The contractor shall identify unauthorized modification to the approved efficacy test methods, or modifications to the methods in the latest approved Series 870 Health Effects or Series 830 Product Properties Test Guidelines. The contractor shall determine if the efficacy performance standards of Subdivision G of the Pesticide Assessment Guidelines, and other AD approved efficacy protocols, are met; or if the product chemistry or acute toxicity results are sufficient.

The OPP has determined that the contract described in this document involve work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3), the contracts with Computer Sciences Corporation, prohibits use of the information for any purpose not specified in these contracts; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the *FIFRA Information Security Manual*. In addition, Computer Sciences Corporation is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to Computer Sciences Corporation until the requirements in this document have been fully satisfied. Records of information provided to Computer Sciences Corporation will be maintained by EPAProject Officers for these contracts. All information supplied to Computer Sciences Corporation by EPA for use in connection with these contracts will be returned to EPA when Computer Sciences Corporation has completed its work.

List of Subjects

Environmental protection, Business and industry, Government contracts, Government property, Security measures.

Dated: October 18, 2007.

Kathryn Bouve,

Acting Director, Office of Pesticide Programs.

[FR Doc. E7–21090 Filed 10–30–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8489–9]

Meeting of the National Drinking Water Advisory Council—Notice of Public Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Under Section 10(a)(2) of Public Law 92–423, ''The Federal Advisory Committee Act,'' notice is hereby given of a meeting of the National Drinking Water Advisory Council (NDWAC), established under the Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*). The Council will consider various issues associated with communicating about drinking water including how to communicate effectively on a daily basis and during a crisis. EPA staff will also provide information about efforts in these areas. The Council will receive updates about several on-going projects including the third Contaminant Candidate List, Geologic Sequestration and the Total Coliform Rule/Distribution System Federal Advisory Committee. Members of the Council will give updates on Small Systems Subgroup and Performance Measures Subgroup.

DATES: The Council meeting will be held on November 15, 2007, from 8:30 a.m. to 5:30 p.m., and November 16, 2007, from 8:30 a.m. to noon, Eastern Time.

ADDRESSES: The meeting will be held at the Four Points by Sheraton Hotel, located at 1201 K Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Members of the public who would like to attend the meeting, present an oral statement, or submit a written statement, should contact Veronica Blette, by e-mail at: *blette.veronica@epa.gov*, by phone, 202–564–4094, or by regular mail at the U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water (MC 4601M), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The Council encourages the public's input and will allocate one hour (3:15–4:15 p.m.) on November 15, 2007, for this purpose. Oral statements will be limited to five minutes. It is preferred that only one person present the statement on behalf of a group or organization. To ensure adequate time for public

involvement, individuals or organizations interested in presenting an oral statement should notify Veronica Blette by telephone at 202–564–4094 no later than November 7, 2007. Any person who wishes to file a written statement can do so before or after a Council meeting. Written statements received by November 7, 2007, will be distributed to all members of the Council before any final discussion or vote is completed. Any statements received November 8, 2007, or after the meeting will become part of the permanent meeting file and will be forwarded to the Council members for their information.

Special Accommodations

For information on access or services for individuals with disabilities, please contact Veronica Blette at 202–564–4094 or by e-mail at *blette.veronica@epa.gov*. To request accommodation of a disability, please contact Veronica Blette, preferably at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

Dated: October 25, 2007.

Nanci E. Gelb,

Deputy Director, Office of Ground Water and Drinking Water.

[FR Doc. E7–21444 Filed 10–30–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8489–8]

Notification of a Public Teleconference of the Science Advisory Board Drinking Water Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office is announcing a public teleconference of the SAB Drinking Water Committee (DWC) to discuss advisory activities for the coming year.

DATES: The SAB will hold a public teleconference on November 13, 2007. The teleconference will begin at 1 p.m. and end at 3 p.m. (Eastern Time).

Location: The teleconference will be conducted by telephone only.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing to obtain general information concerning this public teleconference or meeting should contact Dr. Sue Shallal, Designated Federal Officer (DFO), EPA Science Advisory Board (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via telephone/voice mail: (202) 343–9977; fax: (202) 233–0643; or e-mail at: *shallal.suhair@epa.gov*. General information concerning the EPA Science Advisory Board can be found on the EPA SAB Web Site at: *http://www.epa.gov/sab*.

SUPPLEMENTARY INFORMATION: The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice to the Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Background: EPA's Office of Water has requested that the SAB DWC evaluate three Agency activities in the coming year. To acquaint the DWC with these activities, EPA will provide introductory briefings to the DWC on: (1) The Aircraft Drinking Water Rule; (2) the Drinking Water Draft Contaminant Candidate List 3; and (3) Waterborne Diseases: Measures to Link Drinking Water Programs to Public Health Outcomes. The Agency will offer these briefings to acquaint the DWC with the Agency's activities in preparation for future meetings. Preliminary background information on these activities follow.

Aircraft Drinking Water Rule—Under the Safe Drinking Water Act (SDWA), any interstate carrier conveyance (ICC) that regularly serves drinking water to an average of at least 25 individuals daily, at least 60 days per year, is subject to the National Primary Drinking Water Regulations (NPDWR). An ICC is a carrier which conveys passengers in interstate commerce. The classes of ICCs include airplanes, trains, buses, and water vessels. The U.S. EPA is responsible for developing and implementing the NPDWRs for all public water systems, including public water systems on ICCs. The existing NPDWRs were designed for traditional, stationary public water systems, not mobile aircraft water systems that are operationally very different. EPA is proposing an Aircraft Drinking Water Rule (ADWR) that only addresses aircraft within U.S. jurisdiction. However, EPA is also supporting an international effort led by the World Health Organization to develop international guidelines for aircraft drinking water. The proposed ADWR applies to the onboard water system only. The Food and Drug Administration is responsible for regulating the watering points that include the water cabinets, carts, trucks, and hoses from which aircraft board water. The Office of Water has asked the DWC to hold a future consultative meeting on this topic.

Drinking Water Contaminant Candidate List Draft Revisions—The 1996 Safe Drinking Water Act Amendments (SDWA) require EPA to (1) publish every five years a list of currently unregulated contaminants in drinking water that may pose risks (the Contaminant Candidate List or ''CCL''), and (2) make determinations on whether or not to regulate at least five contaminants from that list on a staggered five year cycle. The list must be published after consultation with the scientific community, including the SAB, after notice and opportunity for public comment, and after consideration of the occurrence database established under section 1445(g) of the SDWA. The unregulated contaminants considered for the list must include, but are not limited to, substances referred to in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), and substances registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Developing the Contaminant Candidate List is part of the process of identifying water-borne threats to public health that need to be addressed by the Agency. EPA published and finalized the first CCL (CCL1) on March 2, 1998 (63 FR 10273). CCL1 contained 50 chemicals and 10 microbial contaminants/groups and was developed using technical experts who reviewed readily available information. EPA consulted with the scientific community, including the SAB, on a process for developing the first CCL. EPA published and finalized the second CCL (CCL2) on February 24, 2005 (70 FR 9071). CCL2 carried forward the remaining 51 chemical and microbial contaminants/groups listed on CCL1. The Office of Water has asked the DWC to peer review the draft CCL 3 at a future meeting.

Waterborne Diseases: Measures to Link Drinking Water Programs to Public Health Outcomes—The EPA Office of Water (OW) submitted a draft Measure Development Plan to OMB in October, 2004. As identified in the plan, the focus of OW's activities is to develop a health-based performance measure built on sound scientific data that relates program actions to potential decrease in waterborne disease incidence. EPA's goal is to develop long-term measures

that describe changes over time of disease due to drinking water contamination or changes in the occurrence of indicators of waterborne disease; the objective is to demonstrate the effectiveness of drinking water programs on acute and chronic disease related to microbes or other drinking water contaminants. The Office of Water is currently developing approaches to the health-based measure to include in the Agency's next Strategic Plan with input from the National Drinking Water Advisory Council and has asked the DWC to hold a future consultative meeting on this topic.

Availability of Materials: The draft agenda and other materials will be posted on the SAB Web Site at: *http://www.epa.gov/sab* prior to the teleconference.

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for the SAB to consider during the public teleconference and/or meeting. Oral Statements: In general, individuals or groups requesting an oral presentation at a public SAB teleconference will be limited to three minutes per speaker, with no more than a total of one-half hour for all speakers. To be placed on the public speaker list, interested parties should contact Dr. Sue Shallal, DFO, in writing (preferably via e-mail), by November 6, 2007, at the contact information noted above. Written Statements: Written statements should be received in the SAB Staff Office in accordance with the dates mentioned above so that the information may be made available to the SAB for their consideration prior to each teleconference. Written statements should be supplied to the DFO in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format).

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Sue Shallal at (202) 343–9977 or *shallal.suhair@epa.gov*. To request accommodation of a disability, please contact Dr. Shallal preferably at least ten days prior to the teleconference, to give EPA as much time as possible to process your request.

Dated October 25, 2007.

Anthony F. Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. E7–21446 Filed 10–30–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8489–3]

Science Advisory Board Staff Office; Notification of Four Public Teleconferences of the Science Advisory Board Committee on Valuing the Protection of Ecological Systems and Services

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces four public teleconferences of the SAB Committee on Valuing the Protection of Ecological Systems and Services (C–VPESS) to discuss components of a draft report related to valuing the protection of ecological systems and services.

DATES: The SAB will conduct four public teleconferences. The public teleconferences will occur on November 19, 2007, November 20, 2007, December 3, 2007, and December 10, 2007. All calls will begin at 1 p.m. and end at 3 p.m. (eastern daylight time).

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing to obtain general information concerning the public teleconferences may contact Dr. Angela Nugent, Designated Federal Officer (DFO), via telephone at: (202) 343–9981 or e-mail at: *nugent.angela@epa.gov*. General information concerning the EPA Science Advisory Board can be found on the EPA Web Site at: *http://www.epa.gov/sab*.

SUPPLEMENTARY INFORMATION: The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Background: Background on the SAB C–VPESS and its charge was provided in 68 FR 11082 (March 7, 2003). The purpose of the teleconferences is for the SAB C–VPESS to discuss components of a draft advisory report calling for expanded and integrated approach for valuing the protection of ecological systems and services. These activities are related to the Committee's overall charge: To assess Agency needs and the state of the art and science of valuing protection of ecological systems and services and to identify key areas for improving knowledge, methodologies, practice, and research.

Availability of Meeting Materials: Agendas and materials in support of the teleconferences will be placed on the SAB Web Site at: *http://www.epa.gov/sab/* in advance of each teleconference.

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for the SAB to consider during the public teleconferences. *Oral Statements:* In general, individuals or groups requesting an oral presentation at a public SAB teleconference will be limited to three minutes per speaker, with no more than a total of one-half hour for all speakers. To be placed on the public speaker list, interested parties should contact Dr. Angela Nugent, DFO, in writing (preferably via e-mail) 5 business days in advance of each teleconference. *Written Statements:* Written statements should be received in the SAB Staff Office 5 business days in advance of each teleconference above so that the information may be made available to the SAB for their consideration prior to each teleconference. Written statements should be supplied to the DFO in the following formats: One hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format).

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Angela Nugent at (202) 343–9981 or *nugent.angela@epa.gov*. To request accommodation of a disability, please contact Dr. Nugent preferably at least ten days prior to the teleconferences to give EPA as much time as possible to process your request.

Dated: October 22, 2007.

Anthony Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. E7–21450 Filed 10–30–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0461; FRL–8154–8]

Notice of Filing of a Pesticide Petition for Residues of the Fungicide Mandipropamid in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before November 30, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2007–0461 and the pesticide petition number (PP), by one of the following methods:

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

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2007–0461. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the 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 docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. 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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Rose Mary Kearns, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5611; e-mail address: *kearns.rosemary@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

• Crop production (NAICS code 111).

• Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

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

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. What Action is the Agency Taking?

EPA is printing notice of the filing of a pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or modification of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that the pesticide petition described in this notice contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the pesticide petition. Additional data may be needed before EPA rules on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition included in this notice, prepared by the petitioner, is included in a docket EPA has created for this rulemaking. The docket for this petition is available on-line at *http://www.regulations.gov*.

New Tolerance

PP 6F7057. Syngenta Crop Protection, 410 Swing Road, P.O. Box 18300, Greensboro, NC 27419, proposes to establish a tolerance for residues of the fungicide mandipropamid, benzeneacetamide, 4-chloro-N-[2-[3-methoxy-4-(2-propynyloxy) phenyl]ethyl]-alpha-(2-propynyloxy) in or on food commodities Brassica, Head and Stem, Subgroup 5A at 3 parts per million (ppm); Brassica, Head and Stem, Subgroup 5B at 30 ppm; Cucurbit Vegetables, Group 9 at 0.3 ppm; Fruiting Vegetables, Group 8 at 1 ppm; Tuberous and Corm Vegetables, Subgroup 1C at 0.01 ppm; Grapes at 2 ppm; Raisins at 4 ppm; Onions, dry bulb at 0.05 ppm; Onions, green at 4 ppm; and Tomato, paste at 1.3 ppm. The analytical method involves extraction of mandipropamid residues from crop samples by homogenization with acetonitrile:water (80:20 v/v). Extracts are centrifuged and aliquots diluted with water prior to being cleaned-up using polymeric solid-phase extraction cartridges. Residues of mandipropamid are quantified using high performance liquid chromatography with mass spectrometric detection (LC-MS/MS). This method has been successfully validated at an independent facility and therefore, suitable for use as the enforcement method for the determination of residues of mandipropamid in crops. The multi-residue method was not successful at determining residues of mandipropamid.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 19, 2007.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E7–21436 Filed 10–30–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–1008; FRL–8152–6]

Pesticides; Draft Guidance for Pesticide Registrants on Label Statements Regarding Third-Party Endorsements and Cause Marketing Claims

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The Agency is announcing the availability of and seeking public comment on a draft Pesticide Registration Notice (PR Notice) entitled ''Label Statements Regarding Third-Party Endorsements & Cause Marketing Claims.'' PR Notices are issued by the Office of Pesticide Programs (OPP) to inform pesticide registrants and other interested persons about important policies, procedures, and registration related decisions, and serve to provide guidance to pesticide registrants and OPP personnel. This particular draft PR Notice provides guidance to the registrant concerning the Agency's framework for evaluating label statements regarding third-party endorsements and cause marketing claims, in which registrants and other interested parties may wish to comment.

DATES: Comments must be received on or before December 31, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2007–1008, by one of the following methods:

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

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2007–1008. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the 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 docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. 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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT:

Nicole Zinn, Immdediate Office (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: 703-308-7076; fax number: 703-308-4776; e-mail address: *zinn.nicole@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me

This action is directed to the public in general, although this action may be of particular interest to those persons who register products under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

See Unit III below for a list of questions that the Agency would like the public to address.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Action is the Agency Taking?

The Agency is announcing the issuance of a draft Pesticide Registration Notice [PR-2007-xx] that describes the Agency's framework for evaluating label statements regarding third-party endorsements and cause marketing claims. This draft Notice contains a description of the Agency's framework for evaluating proposed statements and graphic material to appear on pesticide labeling regarding third-party endorsements or a relationship between the pesticide registrant and a charity (''cause marketing claims''). The draft Notice identifies factors EPA may consider in reviewing applications for registration or amended registration with labeling that contains either third-party endorsements or cause marketing claims.

The Notice also identifies the types of discussion and information that applicants could provide to support EPA review of such applications. These items may include a mock label, documentation of the third-party endorsement or information to substantiate the truthfulness of the cause marketing claim, and a discussion of potential consumer impacts, including consumer market research when appropriate. In some cases, EPA could approve a proposed label statement but conditionally require the registrant to provide additional information to assess whether adverse consequences resulted from the addition of the label statement.

B. Why is the Agency Taking this Action?

In January 2006, The Clorox Company (Clorox) contacted EPA about adding cause marketing language to some of their pesticide labels. The proposed language described a philanthropic relationship between Clorox and the American Red Cross (Red Cross). In March 2006, EPA met with Clorox and Red Cross officials to discuss adding a cause marketing claim to a pesticide label. Clorox described the partnership agreement they had entered into with the Red Cross, discussed what cause marketing language they were currently using on non-pesticide products, and presented a label mock-up. In this meeting, EPA expressed concern that consumers could understand the Red Cross symbol on the label as an implied safety claim. Clorox provided an additional presentation in July 2006 which included a toxicology profile of bleach; a National Capital Area Poison Control Center presentation regarding incidents involving bleach; and information that the labeling would not alter consumer behavior in ways that could lead to misuse.

After review of the information described above, EPA approved Red Cross ''cause marketing'' language on Clorox label products. In particular, the Agency decision relied on EPA's expectation that consumers will not interpret the Red Cross symbol on labels to mean that the product is safe, which was based on data from consumer survey research. The decision also relied on an assessment of the likely health consequences were the products to be misused as a result of the presence of the cause marketing labeling and consideration of whether such labeling would alter consumer behavior in ways that could lead to misuse. EPA concluded that the available information was sufficient to support a conclusion that the product bearing the cause marketing language would not be ''misbranded'' under FIFRA.

After EPA's decision became widely known, a number of organizations, such as the Association of American Pest Control Officials, Beyond Pesticides, Pesticide Action Network North America, Center for Environmental Health, American Bird Conservancy, Pesticide Education Project, Strategic Counsel on Corporate Accountability,

Environmental Health Fund, The Endocrine Disruption Exchange, and Northwest Coalition for Alternatives to Pesticides, as well as Attorneys General in six states, have petitioned the Agency to rescind this decision because they believe the use of the Red Cross symbol implies an endorsement of the product and/or its safety. In April 2007, the Minnesota Department of Agriculture prohibited Clorox products with the Red Cross charity labels from being distributed in Minnesota.

This topic was discussed by the Pesticide Program Dialogue Committee (PPDC) in May 2007. The PPDC, established under the Federal Advisory Committee Act, consists of a diverse group of stakeholders and provides an opportunity for feedback to the pesticide program on various pesticide regulatory, policy and program implementation issues. The Agency explained at the May 2007 session the basis for the decision and that the use of the labeling approved for the Clorox products was neither false nor misleading. In order to expand the discussion of these issues to a wider audience, and to provide a focus for comments, the Agency developed a framework and guidelines for evaluating these types of labeling proposals. This draft guidance contains a high standard for approval. At a minimum, the label of a registered product must be effective in providing both use instructions and necessary safety information.

III. Questions

The Agency requests public input for a number of questions about the proposed evaluation process for label statements regarding third-party endorsements and cause marketing claims.

1. Are there other standards in FIFRA, besides the misbranding standards sec. 2(q) and the unreasonable adverse effects standards in secs. 3(c)(5) and 3(c)(7), that the Agency should use in deciding whether to approve third-party endorsements or cause marketing claims?

2. Under what circumstances could the use of a label statement containing a third-party endorsement or cause marketing claim affect a consumer's assumptions about efficacy or safety?

3. EPA is seeking to ensure that its decisions whether to approve third-party endorsements or cause marketing claims have a sound basis. Please suggest how EPA might judge whether or not to request additional information to assess the impacts of a claim on consumers.

4. Please comment on what additional types of information EPA should request to assess the impacts of a claim on consumers' assumptions about efficacy or safety or about whether a claim detracts from other information presented on the label.

5. What, if any, restrictions should there be on the types of organizations that can participate in third-party endorsement or cause marketing claims on labels?

6. What, if any, restrictions should there be on the types of symbols that can be used on labels, in order to minimize the potential impact of consumers' assumptions about efficacy or safety?

7. How should the Agency evaluate whether label statements containing a third-party endorsement or cause marketing claim detract from other information presented on the label?

8. How should the Agency maximize the effectiveness of disclaimer language when it is used to mitigate the potential for misunderstandings?

9. Are there other factors the Agency should consider when evaluating third-party endorsements or cause marketing claims on labels?

10. Please identify and explain why any particular population groups may be more vulnerable to adverse impacts or more likely to misunderstand label statements regarding third party endorsements or cause marketing claims.

11. What kind of public participation process, if any, is appropriate when the Agency evaluates a specific proposed label statement regarding a third party endorsement or a cause marketing claim?

12. Should the Agency consider imposing a time limitation with regard to approval and use of the third party endorsement label that is granted?

13.One proposal is that registrants could use a hang tag, wrap around, shrink wrap or other approach to display cause marketing language or a third-party endorsement. Please comment on this proposal.

14. Under what circumstances, if any, should the contents of an application to add a third-party endorsement or cause marketing claim to the label of a registered product be treated as Confidential Business Information (CBI)? What information should be required to support a claim of CBI?

IV. Do PR Notices Contain Binding Requirements?

The PR Notice discussed in this notice is intended to provide guidance to EPA personnel and decision makers and to pesticide registrants. While the requirements in the statutes and Agency regulations are binding on EPA and the applicants, this PR Notice is not binding on either EPA or pesticide registrants, and EPA may depart from the guidance where circumstances warrant and without prior notice. Likewise, pesticide registrants may assert that the guidance is not appropriate generally or not applicable to a specific pesticide or situation.

List of Subjects

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

Dated: October 17, 2007.

Debra Edwards,

Director, Office of Pesticide Programs.

[FR Doc. E7–21468 Filed 10–30–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2007–1067; FRL–8155–2]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from September 10, 2007 to October 5, 2007, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the specific PMN number or TME number, must be received on or before November 30, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2007–1067, by one of the following methods.

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

• *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Hand Delivery*: OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID number EPA–HQ–OPPT–2007–0984. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2007–1067. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' systems, 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 regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the docket are listed in the docket's index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov web site to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC PublicReading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone numberof the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed CBI). In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions - The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at the estimate.

vi. Provide specific examples to illustrate your concerns, and suggested alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those

chemicals. This status report, which covers the period from September 10, 2007 to October 5, 2007, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 46 PREMANUFACTURE NOTICES RECEIVED FROM: 09/10/07 TO 10/05/07

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–07–0679	09/10/07	12/08/07	Orient Corporation of America	(S) Dye for stationary ink	(S) [1,1′-biphenyl]-2,2′-disulfonic acid, 4-[(4,5-dihydro-3-methyl-5-oxo-1-phenyl-1h-pyrazol-4-yl)azo]-4′-[(2-hydroxy-1-naphthalenyl)azo]-, disodium salt
P–07–0680	09/11/07	12/09/07	CBI	(G) Resin for coatings	(G) Acrylic polymer
P–07–0681	09/11/07	12/09/07	CBI	(G) Resin for coatings	(G) Acrylic polymer
P–07–0682	09/11/07	12/09/07	CBI	(G) Resin for coatings	(G) Acrylic polymer
P–07–0683	09/11/07	12/09/07	CBI	(G) Resin for coatings	(G) Acrylic polymer
P–07–0684	09/11/07	12/09/07	CBI	(G) Resin for coatings	(G) Acrylic polymer
P–07–0685	09/11/07	12/09/07	CBI	(G) Resin for coatings	(G) Acrylic polymer
P–07–0686	09/12/07	12/10/07	Huntsman Corporation	(S) Isocyanate curing agent for polyurea coatings	(G) Polyetheramine
P–07–0687	09/12/07	12/10/07	CBI	(G) Additive, open, non-dispersive use	(G) Polyester amine adduct
P–07–0688	09/12/07	12/10/07	CBI	(G) Additive, open, non-dispersive use	(G) Polyester amine adduct
P–07–0689	09/12/07	12/10/07	CBI	(G) Additive, open, non-dispersive use	(G) Polyester amine adduct
P–07–0690	09/12/07	12/10/07	CBI	(G) Additive, open, non-dispersive use	(G) Polyester amine adduct
P–07–0691	09/12/07	12/10/07	CBI	(G) Additive, open, non-dispersive use	(G) Polyester amine adduct
P–07–0692	09/12/07	12/10/07	CBI	(G) Additive, open, non-dispersive use	(G) Polyester amine adduct
P–07–0693	09/12/07	12/10/07	PPG Industries, Inc.	(G) Component of a coating	(G) 2-(meth)alkeneoic acid-hydroxy alkyl ester, 2-alkeneoic acid alkyl ester, ethenylbenzene, 2-alkeneoic acid-hydroxy alkyl ester, 2-alkeneoic acid alkyl ester, (2)methy)alkeneoic acid oxiranyl alkyl ester and dialkyl peroxide
P–07–0694	09/12/07	12/10/07	PPG Industries, Inc.	(G) Component of a coating	(G) 2-(meth)alkeneoic acid-hydroxy alkyl ester, 2-alkeneoic acid alkyl ester, ethenylbenzene, 2-alkeneoic acid-hydroxy alkyl ester, 2-alkeneoic acid alkyl ester, (2)methy)alkeneoic acid oxiranyl alkyl ester and dialkyl peroxide
P–07–0695	09/12/07	12/10/07	CBI	(G) Cleaner additive	(G) Sorbitan, alkanoate
P–07–0696	09/12/07	12/10/07	Huntsman International, LLC	(S) Exhaust application to cotton fabrics	(G) Substituted naphthalenesulfonic acid azo substituted phenyl sulfonyl compound coupled with substituted amino phenyl sulfonyl compound
P–07–0697	09/13/07	12/11/07	Cytec Industries Inc.	(S) Resin for paints and coatings	(G) Alkanedioc acid, polymer with isocyanate, alkyl diols, and substituted alkenoate, alkylamine-blocked, compounds with substituted alkanol
P–07–0698	09/13/07	12/11/07	CBI	(G) Oligomer	(G) Polyester acrylate
P–07–0699	09/14/07	12/12/07	CBI	(G) Adhesion promoter	(G) Acrylics modified chlorinated polypropylene
P–07–0700	09/14/07	12/12/07	CBI	(G) Additive	(G) Polyester resin

I. 46 PREMANUFACTURE NOTICES RECEIVED FROM: 09/10/07 TO 10/05/07—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–07–0701	09/14/07	12/12/07	CBI	(G) Sealant	(G) Poly [oxy (alkyl-1,2-ethanediyl)], .alpha.-alkyl-.omega.-[3-(alkyloxyalkylsilyl)propoxy]-
P–07–0703	09/17/07	12/15/07	CBI	(G) Open non-dispersive (coating)	(G) Fluorinated aliphatic polyisocyanate based on hdi
P–07–0704	09/18/07	12/16/07	CBI	(S) Low gloss topcoat for plastics, leather and epdm rubber; low gloss basecoat for plastics, leather and epdm rubber	(G) Waterborne polyurethane
P–07–0705	09/19/07	12/17/07	CBI	(G) Sealant	(G) Polyurethane hydrid
P–07–0706	09/19/07	12/17/07	CBI	(G) Chemical intermediate	(G) Phosphonic acid ester
P–07–0707	09/20/07	12/18/07	CBI	(G) Open non dispersive (coatings)	(G) Blocked aromatic polyisocyanate
P–07–0708	09/21/07	12/19/07	CBI	(G) Adhesion promoter	(G) Acrylics modified chlorinated polypropylene
P–07–0709	09/24/07	12/22/07	CBI	(S) The PMN substance function as binders in lithographic printing inks, as follows: Use heat set web offset printing inks sheet fed quickset inks	(G) Rosin, polymer with monocarboxylic acids, phenols, maleic anhydride, formaldehyde, pentaerythritol and glycerol
P–07–0710	09/24/07	12/22/07	CBI	(S) The PMN substance function as binders in lithographic printing inks, as follows: Use heat set web offset printing inks sheet fed quickset inks	(G) Rosin, polymer with monocarboxylic acids, phenols, maleic anhydride, formaldehyde, pentaerythritol and glycerol
P–07–0711	09/24/07	12/22/07	CBI	(S) The PMN substance function as binders in lithographic printing inks, as follows: Use heat set web offset printing inks sheet fed quickset printing inks	(G) Rosin, polymer with monocarboxylic acids, phenols, maleic anhydride, formaldehyde, pentaerythritol and glycerol
P–07–0712	09/24/07	12/22/07	CBI	(S) The PMN substance function as binders in lithographic printing inks, as follows: Use heat set web offset printing inks sheet fed quick set printing inks	(G) Rosin, polymer with monocarboxylic acids, phenols, maleic anhydride, formaldehyde, pentaerythritol and glycerol
P–07–0713	09/24/07	12/22/07	CBI	(S) The PMN substance function as binders in lithographic printing inks, as follows: Use heat set web offset printing inks sheet fed quick set printing inks	(G) Rosin, polymer with monocarboxylic acids, phenols, maleic anhydride, formaldehyde, pentaerythritol and glycerol
P–07–0714	09/24/07	12/22/07	CBI	(S) The PMN substance function as binders in lithographic printing inks, as follows: Use heat set web offset printing inks sheet fed quick set printing inks	(G) Rosin, polymer with monocarboxylic acids, phenols, maleic anhydride, formaldehyde, and glycerol
P–07–0715	09/25/07	12/23/07	CBI	(G) Open, non-dispersive use.	(G) Epoxy amine polymer
P–07–0716	09/26/07	12/24/07	CBI	(G) Solvent	(S) Hydrocarbons, C_4, 1,3-butadiene-free, polymd., triisobutylene fraction, hydrogenated
P–07–0717	09/26/07	12/24/07	CBI	(S) Crosslinker for coatings and adhesives	(G) Crosslinker
P–07–0718	09/26/07	12/24/07	CBI	(S) Crosslinker for coatings and adhesives	(G) Crosslinker
P–07–0719	09/26/07	12/24/07	Firmenich Inc.	(S) Aroma ingredient to use in fragrance mixtures, which in turn are used in perfumes, soaps, cleansers, etc.	(S) Benzeneacetonitrile, .alpha.-butylidene-, (.alpha. z)-
P–07–0720	09/28/07	12/26/07	CBI	(G) Open, non-dispersive (resin)	(G) Functionalized polyolefin, amine salt
P–07–0721	09/28/07	12/26/07	Firmenich, Inc.	(S) Aroma chemical for use in fragrance mixtures, that in turn are used in perfumes, soaps, cleaners, etc.	(S) 1,3-cyclohexadiene-1-carboxylic acid, 4,6,6-trimethyl-, ethyl ester
P–07–0722	09/27/07	12/25/07	Cytec Industries Inc.	(S) Binder resin for waterborne paints and coatings	(G) Substituted alkenoic acid, polymer with alkyl alkenoate, substituted amide and alkenoic acid
P–07–0723	09/27/07	12/25/07	CBI	(G) Ink for color printers	(G) acetamide
P–07–0724	09/28/07	12/26/07	CBI	(G) Open, non-dispersive (resin)	(G) Substituted benzene polymer, aminomethylated

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 25 NOTICES OF COMMENCEMENT FROM: 9/10/07 TO 10/05/07

Case No.	Received Date	Commencement Notice End Date	Chemical
P–03–0654	09/17/07	09/05/07	(G) Polyurethane - polyester elastomer
P–03–0755	09/17/07	08/21/07	(G) Cross-linked acrylic copolymer
P–06–0259	09/14/07	08/18/07	(S) Escherichia coli, bl21 de3 (pet-opda), lysate
P–06–0657	09/21/07	09/06/07	(G) Alkyl acetoacetate resin
P–06–0767	09/17/07	08/20/07	(G) Polymer of fatty acids methyl esters hydroformylation products, hydrogenated, with alkoxylated glycerine
P–06–0805	09/10/07	09/06/07	(G) Modified thiocarbamate
P–07–0045	09/24/07	09/13/07	(G) Polyacrylate resin
P–07–0168	09/28/07	09/27/07	(G) Heterocyclic homopolymer, polycyclic substituted ester
P–07–0304	09/27/07	09/10/07	(G) 2-(substituted 1,3,5-triazin-2-yl)-5-substituted phenol
P–07–0334	09/13/07	09/10/07	(G) Acrylated aliphatic polyurethane
P–07–0355	09/17/07	08/27/07	(G) 3-bromo-1-(3-chloro-2-pyridinyl)-1h-pyrazole derivative
P–07–0357	09/11/07	08/13/07	(G) Polyaniline emeraldine salt
P–07–0389	09/10/07	07/20/07	(G) Trialkenyl substituted cyclic alkane
P–07–0413	09/17/07	09/10/07	(S) Phenol, 2-bromo-4-methyl-
P–07–0444	09/26/07	09/03/07	(G) Surface modified aluminum hydroxide
P–07–0458	09/13/07	08/27/07	(G) Bismaleimide resin
P–07–0472	09/20/07	09/18/07	(G) Amphoteric acrylic polymer
P–07–0473	09/28/07	09/05/07	(G) Dimer fatty acid based polyester polyurethane
P–07–0474	09/27/07	09/07/07	(G) Modified copolyester
P–07–0482	09/24/07	09/17/07	(G) Pentaerythritol cocoate
P–07–0487	09/28/07	09/26/07	(G) Unsaturated alkylcarboxylic acid, polymers with alkanedioic acid, alkyl alcohols, alkylaldehyde, substituted triazine, substituted carbomonocycle and urea
P–07–0488	09/21/07	09/19/07	(G) Pvb derivative
P–99–0778	09/26/07	09/16/07	(G) Fatty acid modified polyurethane resin

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: October 22, 2007.

Chandler Sirmons,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. E7–21439 Filed 10–30–07; 8:45 am]

BILLING CODE 6560–50–S

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Notice of Sunshine Act

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

DATE AND TIME: Wednesday, November 7, 2007, 10 a.m. Eastern Time.

PLACE: Clarence M. Mitchell, Jr. Conference Room on the Ninth Floor of the EEOC Office Building, 1801 ''L'' Street, NW., Washington, DC 20507.

STATUS: The meeting will be open to the public.

Matters to be Considered

Open Session

1. Announcement of Notation Votes, and

2. Obligation of Funds for a Three-Month Extension of the National Contact Center Contract.

Note: In accordance with the Sunshine Act, the meeting will be open to public observation of the Commission's deliberations and voting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.)

Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTY) at any time for information on these meetings. The EEOC provides sign language interpretation at Commission meetings for the hearing impaired. Requests for other reasonable accommodations may be made by using the voice and TTY numbers listed above.

CONTACT PERSON FOR MORE INFORMATION: Stephen Llewellyn, Executive Officer on (202) 663–4070.

This Notice Issued October 29, 2007.

Stephen Llewellyn,

Executive Officer, Executive Secretariat.

[FR Doc. 07–5438 Filed 10–29–07; 1:34 pm]

BILLING CODE 6570–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Office of Agreements (202–523–5793 or *tradeanalysis@fmc.gov*).

Agreement No.: 012014–000.

Title: CSAV/NYK Venezuela Space Chapter Agreement.

Parties: Compania Sud Americana De Vapores S.A. and Nippon Yusen Kaisha.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The agreement authorizes CSAV to charter space to NYK for carriage of vehicles and other cargo on car carriers from Baltimore, MD to ports in Venezuela.

Agreement No.: 201175–000.

Title: Port of NY/NJ Sustainable Services Agreement.

Parties: American Stevedoring, Inc.; APM Terminals North America, Inc.; Global Terminal & Container Services LLC; Maher Terminals LLC; New York Container Terminal, Inc.; and Port Newark Container Terminal LLC.

Filing Party: Carol N. Lambos; The Lambos Firm; 29 Broadway 9th Floor; New York, NY 10006–3101.

Synopsis: The agreement would authorize the parties to discuss issues to promote environmentally sensitive, efficient, and secure marine terminal operations in the Port of New York/New Jersey.

By Order of the Federal Maritime Commission.

Dated: October 26, 2007.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E7–21458 Filed 10–30–07; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR Part 515, effective on the corresponding date shown below:

License Number: 002723NF.
Name: Air-Oceanic Services, Inc.
Address: 11010 NW 92nd Terrace, Ste. A, Miami, FL 33178.
Date Revoked: October 6, 2007.
Reason: Failed to maintain valid bonds.

License Number: 002461F.
Name: Cargo Forwarding Inc.
Address: 385 Blackberry Street, Stamford, NY 12167.
Date Revoked: October 19, 2007.
Reason: Surrendered license voluntarily.

License Number: 009847N.
Name: Con-Trand Services, Inc.
Address: 3025 Roy Orr Blvd., Grand Prairie, TX 75050.
Date Revoked: September 27, 2007.
Reason: Failed to maintain a valid bond.

License Number: 016290F.
Name: Delmar Logistics, Inc.
Address: 9310 La Cienega Blvd., Inglewood, CA 90301.
Date Revoked: September 1, 2007.
Reason: Surrendered license voluntarily.

License Number: 019722N.
Name: Darpex Import/Export Corporation.
Address: 8225 NW 80th Street, Miami, FL 33166.
Date Revoked: September 27, 2007.
Reason: Failed to maintain a valid bond.

License Number: 018437NF.
Name: Delmar Logistics (IL), Inc.
Address: 1555 Mittel Blvd., Suite R, Wood Dale, IL 60191.
Date Revoked: September 1, 2007.
Reason: Surrendered license voluntarily.

License Number: 008813N.
Name: International Intermodal Express, Ltd.
Address: 1111 Broadway, Oakland, CA 94607.
Date Revoked: July 19, 2007.
Reason: Failed to maintain a valid bond.

License Number: 018821N.
Name: J Eastern Transport International, Inc. dba Eastern Transport International.
Address: 555 W. Redondo Beach Blvd., #203, Gardena, CA 90248.
Date Revoked: September 30, 2007.
Reason: Surrendered license voluntarily.

License Number: 013532N.
Name: Joint Bright Corporation dba Premier Shipping Company.
Address: 2225 W. Commonwealth Ave., Ste., 110, Alhambra, CA 91803.
Date Revoked: October 7, 2007.
Reason: Failed to maintain a valid bond.

License Number: 018914N.
Name: Professional Service Shipping, Inc. dba Proserve Shipping Company.
Address: 700 Rockaway Turnpike, Ste. 205, Lawrence, NY 11559.
Date Revoked: October 13, 2007.
Reason: Failed to maintain a valid bond.

License Number: 006313N.
Name: Puerto Rico Freight Systems, Inc.
Address: Edificio 11, Central Mercantil Zona Libre, Guanaybo, PR 00965.
Date Revoked: July 14, 2007.
Reason: Failed to maintain a valid bond.

License Number: 004462F.
Name: R S Exports, Inc.
Address: 11914 Aviation Blvd., Suite A, Inglewood, CA 90304.
Date Revoked: September 29, 2007.
Reason: Failed to maintain a valid bond.

License Number: 020363N.
Name: Ultimate Lines, Inc.
Address: 1026 Hickory Street, 3rd Fl., Kansas City, MO 64101.
Date Revoked: October 7, 2007.
Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. E7–21459 Filed 10–30–07; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

Fast Dispatch, Inc., 2153 NW 79th Avenue, Doral, FL 33122. *Officers:* Juan F. Amortegui, Vice President (Qualifying Individual). Jario Amortegui, President.

Ancho Logistix (Canada) Ltd., 1030 Kamato Road, Ste. #206, Missisauga, Ontario L4W 486, Canada. *Officers:* Mylai Balakrishnan Karthik, Director (Qualifying Individual). Wasim Ahmed, Director.

SSI Ocean Services, Inc., 8001 NW., 79th Avenue, Miami, FL 33166. *Officers:* Maria D. Lanzas, Vice President, (Qualifying Individual). Steven J. Bresky, Director.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

E S P A Enterprise Corporation dba ESPA Cargo, 4140–B Austin Blvd., Island Park, NY 11558. *Officers:* Jose C. Fernandez, President (Qualifying Individual). Maria J. Fernandez, Vice President.

Estes Air Forwarding LLC, 1100 Commerce Road, Richmond, VA 23224. *Officers:* Harold Gary Weekley, Managing Dir. Int'l., (Qualifying Individual). Stephen E. Hupp, Director.

Sunrise Logistics LLC, 1 Barnard Place, Princeton Junction, NJ 08550. *Officers:* Kunj Behari Kaira, Vice President, (Qualifying Individual). Bal Krishan Kaira, President.

Selim Logistics Systems USA, Inc., 777 Mark Street, #107, Wood Dale, IL 60191. *Officers:* Kanghee Shim, Secretary (Qualifying Individual). Sung In Lee, President.

United Logistics Corp., 3650 Mansell Road, #400, Alpharetta, GA 30022. *Officers:* Joan McDermott, Secretary (Qualifying Individual). Chuanxiang Li, President.

Adonay Trans Services, 145–60 228th Street, Springfield Garden, NY 11413, Regina Nweke, Sole Proprietor.

L.J. Rogers Inc., 170 Cherry & Webb Lane, Westport, MA 02791. *Officers:* Paul J. Rogers, Vice President (Qualifying Individual). Laura J. Mullin, President.

Mission Logistics, LLC, 930 W. Hyde Park Blvd., D, Inglewood, CA 90302. *Officer:* Mike Myung Kuk Choi, President (Qualifying Individual).

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants

ERC International Logistics, LLC, 6 Chesterfield Court, Monkton, MD 21111. *Officers:* Eric R. Clemens, Vice President (Qualifying Individual). Katherine S. Clemens, President.

WTO Express (USA) Corp., 20265 Valley Blvd., Suite B, Walnut, CA 91789. *Officers:* Nancy Ya-Nan Shen, Vice President, (Qualifying Individual). Kuo-An Lee, Director.

Trans Wagon Int'l (USA) Co., Ltd., 20265 Valley Blvd., Walnut, CA 91789. *Officers:* Nancy Ya-Nan, Shen, Vice President (Qualifying Individual). Ching-Tang Yang, Director.

Dated: October 26, 2007.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E7–21457 Filed 10–30–07; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuance

Notice is hereby given that the following Ocean Transportation Intermediary license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR Part 515.

License No.	Name/Address	Date Reissued
017141N	I.C.S. Customs Service, Inc. 1099 Morse Street, Elk Grove Village, IL 60007	July 8, 2007.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. E7–21460 Filed 10–30–07; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

SUMMARY: SUMMARY: Background. Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Michelle Shore—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829)

OMB Desk Officer—Alexander T. Hunt—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Final approval under OMB delegated authority of the extension for three years, without revision, of the following reports:

1. Report title: Recordkeeping and Disclosure Requirements Associated with Securities Transactions Pursuant to Regulation H

Agency form number: Reg H–3

OMB control number: 7100–0196

Frequency: On occasion

Reporters: State member banks and state member trust companies

Annual reporting hours: 102,359 hours

Estimated average hours per response: State member banks with trust departments and state member trust companies: recordkeeping, 2.00 hours; disclosure, 16.00 hours. State member banks without trust departments: recordkeeping; 15 minutes; disclosure, 5.00 hours.

Number of respondents: 232 state member banks with trust departments and state member trust companies, and 669 state member banks without trust departments

General description of report: This information collection is mandatory (12 U.S.C. 325). If the records maintained by state member banks come into the possession of the Federal Reserve, they are given confidential treatment (5 U.S.C. 552(b)(4), (b)(6), and (b)(8)).

Abstract: State member banks and state member trust companies are required to maintain records for three years following a securities transaction. These requirements[1] are necessary to protect the customer, to avoid or settle customer disputes, and to protect the institution against potential liability arising under the anti–fraud and insider trading provisions of the Securities Exchange Act of 1934.

Current Action: On August 24, 2007, the Federal Reserve published a notice in the Federal Register (72 FR 48639) requesting public comment for 60 days on the Reg H–3 information collection. The comment period for this notice expired on October 23, 2007. No comments were received.

2. Report title: Home Mortgage Disclosure Act (HMDA) Loan/Application Register (LAR)

Agency form number: FR HMDA–LAR

OMB control number: 7100–0247

Frequency: Annual

Reporters: State member banks, subsidiaries of state member banks, subsidiaries of bank holding companies, U.S. branches and agencies of foreign banks (other than federal branches,

federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act.

Annual reporting hours: 156,910 hours

Estimated average hours per response: State member banks, 242 hours; and mortgage subsidiaries, 192 hours.

Number of respondents: 527 State member banks, and 153 mortgage subsidiaries.

General description of report: This information collection is mandatory (12 U.S.C. 2803). The information is not given confidential treatment, however, information that might identify individual borrowers or applicants is given confidential treatment under exemption 6 of the Freedom of Information Act (5 U.S.C. 552(b)(6)) and section 304 (j)(2)(B) of HMDA (12 U.S.C. 2803).

Abstract: The information reported and disclosed pursuant to this collection is used to further the purposes of HMDA. These include: (1) To help determine whether financial institutions are serving the housing needs of their communities; (2) to assist public officials in distributing public–sector investments so as to attract private investment to areas where it is needed; and (3) to assist in identifying possible discriminatory lending patterns and enforcing anti–discrimination statutes.

Current Action: On August 24, 2007, the Federal Reserve published a notice in the Federal Register (72 FR 48639) requesting public comment for 60 days on the HMDA information collection. The comment period for this notice expired on October 23, 2007. No comments were received.

Board of Governors of the Federal Reserve System, October 26, 2007.

Jennifer J. Johnson

Secretary of the Board.

[FR Doc. E7–21385 Filed 10–30–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 26, 2007.

A. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105–1579:

1. Hana Financial Group, Inc., Seoul, South Korea; to acquire up to 37.5 percent of the voting shares of Commonwealth Business Bank, Los Angeles, California.

Board of Governors of the Federal Reserve System, October 26, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.E7–21411 Filed 10–30–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 26, 2007.

A. Federal Reserve Bank of Chicago (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Capitol Bancorp, Ltd., and Capital Development Bancorp Limited V, both of Lansing, Michigan; to acquire 51 percent of the voting shares of Adams Dairy Bank (in organization), Blue Springs, Missouri, and thereby engage in operating a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, October 26, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.E7–21410 Filed 10–30–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Friday, November 2, 2007.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th Street entrance between Constitution Avenue and C Streets, NW., Washington, D.C. 20551.

STATUS: Open.

We ask that you notify us in advance if you plan to attend the open meeting and provide your name, date of birth, and social security number (SSN) or passport number. You may provide this information by calling 202–452–2474 or you may **register online**. You may pre–register until close of business

November 1, 2007. You also will be asked to provide identifying information, including a photo ID, before being admitted to the Board meeting. The Public Affairs Office must approve the use of cameras; please call 202–452–2955 for further information. If you need an accommodation for a disability, please contact Penelope Beattie on 202–452–3982. For the hearing impaired only, please use the Telecommunication Device for the Deaf (TDD) on 202– 263–4869.

Privacy Act Notice: Providing the information requested is voluntary; however, failure to provide your name, date of birth, and social security number or passport number may result in denial of entry to the Federal Reserve Board. This information is solicited pursuant to Sections 10 and 11 of the Federal Reserve Act and will be used to facilitate a search of law enforcement databases to confirm that no threat is posed to Board employees or property. It may be disclosed to other persons to evaluate a potential threat. The information also may be provided to law enforcement agencies, courts, and others, but only to the extent necessary to investigate or prosecute a violation of law.

MATTERS TO BE CONSIDERED:

Discussion Agenda:

1. Final Basel II risk–based capital framework.

Note: 1. The staff memo to the Board will be made available to the public in paper. The background document for this item consists of more than 800 pages and it will be made available to the public on a computer disc in Word format. If you require a paper copy of the document, please call Penelope Beattie on 202–452–3982.

2. This meeting will be recorded for the benefit of those unable to attend. Cassettes will then be available for listening in the Board's Freedom of Information Office, and copies can be ordered for $6 per cassette by calling 202–452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

FOR FURTHER INFORMATION CONTACT: Michelle Smith, Director, or Dave Skidmore, Assistant to the Board, Office of Board Members at 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 for a **recorded announcement** of this meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an **electronic announcement**. (The Web site also includes procedural and other information about the open meeting.)

Board of Governors of the Federal Reserve System, October 26, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 07–5430 Filed 10–29–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act; Notice of Meeting

Time and Date:

9 a.m. (Eastern Time), November 19, 2007.

PLACE: 4th Floor Conference Room, 1250 H Street, NW., Washington, DC 20005.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the October 15, 2007 Board member meeting.
2. Executive Director's Report:
   a. Monthly Participant Activity Report.
   b. Monthly Investment Performance Report.
   c. Legislative Report.
3. Trade Pattern Analysis
4. Internal Controls Initiative

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: October 29, 2007.

Thomas K. Emswiler,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 07–5436 Filed 10–29–07; 12:33pm]

BILLING CODE 6760–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget (''OMB'') for review, as required by the Paperwork Reduction Act. The FTC is seeking public comments on its proposal to extend through November 30, 2010 the current OMB clearance for the information collection requirements contained in the Commission's Rule Concerning Disclosure of Written Consumer Product Warranty Terms and Conditions. The clearance is scheduled to expire on November 30, 2007. The FTC is also seeking public comments on its proposal to extend through December 31, 2010 the current OMB clearances for the information collection requirements contained in the Commission's Rule Governing Pre-Sale Availability of Written Warranty Terms and the Informal Dispute Settlement Procedures Rule. Those clearances are scheduled to expire on December 31, 2007.

DATES: Comments must be filed by November 30, 2007.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Warranty Rules: Paperwork Comment, FTC File No. P044403'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered, with two complete copies, to the following address: Federal Trade Commission, Room H-135, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Because paper mail in the Washington area and at the Commission is subject to delay, please consider submitting your comments in electronic form, as prescribed below. However, if the comment contains any material for which confidential treatment is requested, it must be filed in paper form, and the first page of the document must be clearly labeled ''Confidential.''[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible.

Comments filed in electronic form should be submitted by using the following weblink: *https://secure.commentworks.com/ftc-warrantypra* (and following the instructions on the Web-based form). To ensure that the Commission considers an electronic comment, you must file it on the Web-based form at the weblink: *https://secure.commentworks.com/ftc-warrantypra*. If this notice appears at *www.regulations.gov*, you may also file an electronic comment through that Web site. The Commission will consider all comments that regulations.gov forwards to it.

Comments should also be submitted to: Office of Management and Budget, Attention: Desk Officer for the Federal

[1]Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

Trade Commission. Comments should be submitted via facsimile to (202) 395-6974 because U.S. Postal Mail is subject to lengthy delays due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements should be addressed to Allyson Himelfarb, Investigator, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Room H-292, 600 Pennsylvania Ave., N.W., Washington, D.C. 20580, (202) 326-2505.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act (''PRA''), 44 U.S.C. 3501-3521, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. On August 7, 2007, the FTC sought comment on the information collection requirements associated with the FTC's (1) Rule Concerning Disclosure of Written Consumer Product Warranty Terms and Conditions (OMB Control Number 3084-0111); (2) Rule Governing Pre-Sale Availability of Written Warranty Terms (OMB Control Number 3084-0112); and (3) Informal Dispute Settlement Procedures Rule (OMB Control Number 3084-0113) (collectively, ''Warranty Rules'').[2] No comments were received. Pursuant to the OMB regulations that implement the PRA (5 CFR Part 1320), the FTC is providing this second opportunity for public comment while seeking OMB approval to extend the existing paperwork clearance for the Warranty Rules. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before November 30, 2007.

The Warranty Rules implement the Magnuson-Moss Warranty Act, 15 U.S.C. 2301 *et seq.* (''Warranty Act'' or ''Act''), which required the FTC to issue three rules relating to warranties on consumer products: the disclosure of written warranty terms and conditions; pre-sale availability of warranty terms; and rules establishing minimum standards for informal dispute settlement mechanisms that are incorporated into a written warranty.[3]

Consumer Product Warranty Rule (''Warranty Rule''): The Warranty Rule, 16 CFR 701, specifies the information that must appear in a written warranty on a consumer product costing more than $15. The Rule tracks Section 102(a) of the Warranty Act,[4] specifying information that must appear in the written warranty and, for certain disclosures, mandates the exact language that must be used.[5] Neither the Warranty Rule nor the Act requires that a manufacturer or retailer warrant a consumer product in writing, but if they choose to do so, the warranty must comply with the Rule.

The Rule Governing Pre-Sale Availability of Written Warranty Terms (''Pre-Sale Availability Rule''): The Pre-Sale Availability Rule, 16 CFR 702, requires sellers and warrantors to make the text of any written warranty on a consumer product costing more than $15 available to the consumer before sale. Among other things, the Rule requires sellers to make the text of the warranty readily available either by (1) displaying it in close proximity to the product or (2) furnishing it on request and posting signs in prominent locations advising consumers that the warranty is available. The Rule requires warrantors to provide materials to enable sellers to comply with the Rule's requirements and also sets out the methods by which warranty information can be made available before the sale if the product is sold through catalogs, mail order, or door-to-door sales.

Informal Dispute Settlement Rule: The Informal Dispute Settlement Rule, 16 CFR 703, specifies the minimum standards which must be met by any informal dispute settlement mechanism that is incorporated into a written consumer product warranty and which the consumer must use before pursuing legal remedies in court. In enacting the Warranty Act, Congress recognized the potential benefits of consumer dispute mechanisms as an alternative to the judicial process. Section 110(a) of the Act sets out the Congressional policy to ''encourage warrantors to establish procedures whereby consumer disputes are fairly and expeditiously settled through informal dispute settlement mechanisms'' (''IDSMs'') and erected a framework for their establishment.[6] As an incentive to warrantors to establish IDSMs, Congress provided in Section 110(a)(3) that warrantors may incorporate into their written consumer product warranties a requirement that a consumer must resort to an IDSM before pursuing a legal remedy under the Act for breach of warranty.[7] To ensure fairness to consumers, however, Congress also directed that, if a warrantor were to incorporate such a ''prior resort requirement'' into its written warranty, the warrantor must comply with the minimum standards set by the Commission for such IDSMs.[8] Section 110(a)(2) of the Act directed the Commission to establish those minimum standards.[9]

The Informal Dispute Settlement Rule contains standards for IDSMs, including requirements concerning the mechanism's structure (e.g., funding, staffing, and neutrality), the qualifications of staff or decision makers, the mechanism's procedures for resolving disputes (e.g., notification, investigation, time limits for decisions, and follow-up), recordkeeping, and annual audits. The Rule requires that warrantors establish written operating procedures and provide copies of those procedures upon request.

The Informal Dispute Settlement Rule applies only to those firms that choose to be bound by it by requiring consumers to use an IDSM. Neither the Rule nor the Act requires warrantors to set up IDSMs. A warrantor is free to set up an IDSM that does not comply with the Informal Dispute Settlement Rule as long as the warranty does not contain a prior resort requirement.

Warranty Rule Burden Statement:

Total annual hours burden: 107,000 hours, rounded to the nearest thousand.

In its 2004 submission to OMB,[10] the FTC estimated that the information collection burden of including the disclosures required by the Warranty Rule was approximately 34,000 hours per year. Although the Rule's information collection requirements have not changed, this estimate increases the number of manufacturers subject to the Rule based on recent Census data. Nevertheless, because most

[2] 72 FR 44140 (Aug. 7, 2007). The FTC issued a correction Notice on August 10, 2007 (72 FR 45050) in order to provide the appropriate weblink for submitting electronic comments.

[3] 40 FR 60168 (Dec. 31, 1975).

[4] 15 U.S.C. 2302(a).

[5] 40 FR 60168, 60169-60170.

[6] 15 U.S.C. 2310(a).

[7] 15 U.S.C. 2310(a)(3).

[8] *Id.*

[9] 15 U.S.C. 2310(a)(2).

[10] 69 FR 60877 (Oct. 13, 2004).

warrantors would now disclose this information even if there were no statute or rule requiring them to do so, staff's estimates likely overstate the PRA-related burden attributable to the Rule. Moreover, the Warranty Rule has been in effect since 1976, and warrantors have long since modified their warranties to include the information the Rule requires.

Based on conversations with various warrantors' representatives over the years, staff has concluded that eight hours per year is a reasonable estimate of warrantors' PRA-related burden attributable to the Warranty Rule. This estimate takes into account ensuring that new warranties and changes to existing warranties comply with the Rule. Based on recent Census data, staff now estimates that there are 134 large manufacturers and 13,235 small manufacturers covered by the Rule.[11] This results in an annual burden estimate of approximately 106,952 hours (13,369 total manufacturers x 8 hours of burden per year).

Total annual labor costs: $14,118,000, rounded to the nearest thousand

Labor costs are derived by applying appropriate hourly cost figures to the burden hours described above. The work required to comply with the Warranty Rule—ensuring that new warranties and changes to existing warranties comply with the Rule—requires a mix of legal analysis and clerical support. Staff estimates that half of the total burden hours (53,476 hours) requires legal analysis at an average hourly wage of $250 for legal professionals,[12] resulting in a labor cost of $13,369,000. Assuming that the remaining half of the total burden hours requires clerical work at an average hourly wage of $14, the resulting labor cost is approximately $748,664. Thus, the total annual labor cost is approximately $14,117,664 ($13,369,000 for legal professionals + $748,664 for clerical workers).

Total annual capital or other non-labor costs: $0

The Rule imposes no appreciable current capital or start-up costs. As stated above, warrantors have already modified their warranties to include the information the Rule requires. Rule compliance does not require the use of any capital goods, other than ordinary office equipment, which providers would already have available for general business use.

Pre-Sale Availability Rule Burden Statement:

Total annual hours burden: 2,328,000 hours, rounded to the nearest thousand.

In its 2004 submission to OMB, FTC staff estimated that the information collection burden of making the disclosures required by the Pre-Sale Availability Rule was approximately 2,760,000 hours per year. Although there has been no change in the Rule's information collection requirements since 2004, staff has adjusted its previous estimate of the number of manufacturers subject to the Rule based on recent Census data. As discussed above, staff now estimates that there are approximately 134 large manufacturers and 13,235 small manufacturers subject to the Rule. Census data suggests that the number of retailers subject to the Rule has remained largely unchanged since 2004. Therefore, staff continues to estimate that there are 6,552 large retailers and 422,100 small retailers impacted by the Rule.

Since 2001, online retailers have been posting warranty information on their web sites, reducing their burden of providing the required information.[13] While some online retailers make warranty information directly available on their web sites, the majority of them instead provide consumers with instructions on how to obtain that information. Moreover, some online retailers provide warranty information electronically in response to a consumer's request for such information. A review of 20 top online retailers' websites for availability of warranty information suggests that a significant percentage of retailers (40% of the 20 sampled) have begun to incorporate online methods of complying with the Rule—either by posting warranty information online or sending that information to consumers electronically. Based on this information, staff estimates that retailers' annual hourly burden has decreased by twenty percent.[14]

In 2004, staff estimated that large retailers spend an average of 26 hours per year and small retailers spend an average of 6 hours per year to comply with the Rule. Applying a 20% reduction to the FTC's previous estimates, staff assumes that large retailers spend an average of 20.8 hours per year and small retailers spend an average 4.8 hours per year to comply with the Rule. Accordingly, the total annual burden for retailers is approximately 2,162,362 hours ((6,552 large retailers x 20.8 burden hours) + (422,100 small retailers x 4.8 burden hours)).

Staff retains its previous estimate that large manufacturers spend an average of 52 hours per year and small manufacturers spend an average of 12 hours per year to comply with the Rule. Accordingly, the total annual burden incurred by manufacturers is approximately 165,788 hours ((134 large manufacturers x 52 hours) + (13,235 small manufacturers x 12 hours)).

Thus, the total annual burden for all covered entities is approximately 2,328,150 hours (2,162,362 hours for retailers + 165,788 hours for manufacturers).

Total annual labor cost: $32,594,000, rounded to the nearest thousand.

The work required to comply with the Pre-Sale Availability Rule is predominantly clerical, e.g., providing copies of manufacturer warranties to retailers and retailer maintenance of them. Applying a clerical wage rate of $14/hour, the total annual labor cost burden is approximately $32,594,100 (2,328,150 hours x $14 per hour).

Total annual capital or other non-labor costs: De minimis.

The vast majority of retailers and warrantors already have developed systems to provide the information the Rule requires. Compliance by retailers typically entails keeping warranties on file, in binders or otherwise, and posting an inexpensive sign indicating warranty availability.[15] Manufacturer compliance entails providing retailers with a copy of the warranties included with their products.

Informal Dispute Settlement Rule Burden Statement:

Total annual hours burden: 17,000 hours, rounded to the nearest thousand.

The primary burden from the Informal Dispute Settlement Rule comes from the recordkeeping requirements that apply to IDSMs, the use of which is incorporated into a consumer product warranty. In its 2004 submission to OMB, staff estimated that the recordkeeping and reporting burden was

[11] Because some manufacturer likely make products that are not priced above $15 or not intended for household use—and thus would not be subject to the Rules—this figure is likely an overstatement.

[12] Staff has derived an hourly wage rate for legal professionals based upon industry knowledge. The remaining wage rates used throughout this Notice reflect recent data from the Bureau of Labor Statistics National Compensation Survey.

[13] Staff took note of this change in 2004 but, due to the small number of retailers engaging in the practice at that time, declined to make an adjustment to its burden estimate.

[14] This conservative estimate takes into account that staff reviewed a limited number of websites. Moreover, some online retailers also operate ''brick-and-mortar'' operations and still provide paper copies of warranties for review by customers who do not do business online.

[15] Although some retailers may choose to display a more elaborate or expensive sign, that is not required by the Rule.

21,754 hours per year and 8,157 hours per year for disclosure requirements or, cumulatively, approximately 30,000 hours. Although the Rule's information collection requirements have not changed since 2004, the audits filed by the IDSMs indicate that on average fewer disputes were handled over the previous three years. In addition, representatives of the IDSMs indicate that relatively few consumers request a copy of their complete case file, and even fewer request a copy of the annual audit. These factors result in a decreased annual hours burden estimate for the IDSMs. The calculations underlying staff's new estimates follow.

Recordkeeping: The Rule requires IDSMs to maintain individual case files. Because maintaining individual case records is a necessary function for any IDSM, much of the burden would be incurred in the ordinary course of the IDSM's business. Nonetheless, staff retains its previous estimate that maintaining individual case files imposes an additional burden of 30 minutes per case.

The amount of work required will depend on the number of dispute resolution proceedings undertaken in each IDSM. The 2005 audit report for the BBB AUTO LINE states that, during calendar year 2005, it handled 23,672 warranty disputes on behalf of 12 manufacturers (including General Motors, Honda, Ford, Saturn, Volkswagen, Isuzu, and Nissan).[16] The BBB AUTO LINE audits from calendar years 2004 and 2003 indicate warranty disputes totaling 19,793 and 21,859, respectively. Thus, the average number of disputes filed annually through BBB AUTO LINE over this three-year period is 21,775 disputes.[17] According to the 2005 audit report for the BBB AUTO LINE, ten out of the twelve manufacturers reviewed include a ''prior resort'' requirement in their warranties, and thus are covered by the Informal Dispute Settlement Rule. Therefore, staff assumes that virtually all of the average 21,775 disputes handled by the BBB fall within the Rule.

Apart from the BBB audit report, audit reports were submitted on behalf of the National Center for Dispute Settlement (NCDS), the mechanism that handles dispute resolutions for Toyota, Lexus, DaimlerChrysler, Mitsubishi, and Porsche, all of which are covered by the Rule. The 2005 audit of the NCDS operations show that 2,154 disputes were filed in 2005. In addition, the NCDS audit shows that in 2004 and 2003, it handled 2,246 and 3,722 disputes, respectively. Thus, the NCDS handled an average of 2,707 disputes each year from 2003 through 2005.

Based on the above figures, staff estimates that the average number of disputes handled annually by IDSMs covered by the Rule is approximately 24,482 (21,775 disputes handled by BBB AUTO LINE + 2,707 disputes handled by NCDS). Accordingly, staff estimates the total annual recordkeeping burden attributable to the Rule to be approximately 12,241 hours (24,482 disputes x 30 minutes of burden ÷ 60 minutes).

Reporting: The Rule requires IDSMs to update indexes, complete semi-annual statistical summaries, and submit an annual audit report to the FTC. Staff retains its previous estimate that covered entities spend approximately 10 minutes per case for these activities, resulting in a total annual burden of approximately 4,080 hours (24,482 disputes x 10 minutes of burden ÷ 60 minutes).

Disclosure: The Rule requires that information about the IDSM be disclosed in the written warranty. Any incremental costs to the warrantor of including this additional information in the warranty are negligible. The majority of the disclosure burden would be borne by the IDSM, which is required to provide to interested consumers upon request copies of the various types of information the IDSM possesses, including annual audits. Consumers who have dealt with the IDSM also have a right to copies of their records. (IDSMs are permitted to charge for providing both types of information.)

Based on discussions with representatives of the IDSMs, staff estimates that the burden imposed by the disclosure requirements is approximately 408 hours per year for the existing IDSMs to provide copies of this information. This estimate draws from the average number of consumers who file claims each year with the IDSMs (24,482) and the assumption that twenty percent of consumers individually request copies of the records pertaining to their disputes, or approximately 4,896 consumers. Staff estimates that copying such records would require approximately 5 minutes per consumer, including a negligible number of requests for copies of the annual audit.[18] Thus, the IDSMs currently operating under the Rule have an estimated total disclosure burden of 408 hours (4,896 consumers x 5 minutes of burden ÷ 60 minutes).

Accordingly, the total PRA-related annual hours burden attributed to the Rule is approximately 16,729 hours (12,241 hours for recordkeeping + 4,080 hours for reporting + 408 hours for disclosures).

Total annual labor cost: $266,000, rounded to the nearest thousand.

Recordkeeping: Staff assumes that IDSMs use skilled clerical or technical support staff to comply with the recordkeeping requirements contained in the Rule at an hourly rate of $16. Thus, the labor cost associated with the 12,241 annual burden hours for recordkeeping is approximately $195,856 (12,241 burden hours x $16 per hour).

Reporting: Staff assumes that IDSMs also use skilled clerical support staff at an hourly rate of $16 to comply with the reporting requirements. Thus, the labor cost associated with the 4,080 annual burden hours for reporting is approximately $65,280 (4,080 burden hours x $16 per hour).

Disclosure: Staff assumes that IDSMs use clerical support at an hourly rate of $12 to reproduce records and, therefore, the labor cost associated with the 408 annual burden hours for disclosures is approximately $4,896 (408 burden hours x $12 per hour).

Accordingly, the combined total annual labor cost for PRA-related burden under the Rule is approximately $266,032 ($195,856 for recordkeeping + $65,280 for reporting + $4,896 for disclosures).

Total annual capital or other non-labor costs: $329,000

Total capital and start-up costs: The Rule imposes no appreciable current capital or start-up costs. The vast majority of warrantors have already developed systems to retain the records and provide the disclosures required by the Rule. Rule compliance does not require the use of any capital goods, other than ordinary office equipment, to which providers would already have access. In addition, according to a representative of one IDSM, it has already developed systems to collect and retain information needed to

[16] So far as staff is aware, all or virtually all of the IDSMs subject to the Rule are within the auto industry.

[17] Because the number of annual disputes filed has fluctuated, staff believes that taking the average number of disputes filed between 2003 and 2005 (the most recent available data) is the best way to project what will happen over the next three years of the OMB clearance for the Rule.

[18] This estimate includes the additional amount of time required to copy the annual audit upon a consumer's request. However, because staff has determined that a very small minority of consumers request a copy of the annual audit, this estimate is likely an overstatement. In addition, at least a portion of case files are provided to consumers electronically, which further would reduce the paperwork burden borne by the IDSMs.

produce the indexes and statistical summaries required by the Rule, and thus, estimated very low capital or start-up costs.

The only additional cost imposed on IDSMs operating under the Rule that would not be incurred for other IDSMs is the annual audit requirement. According to representatives of each of the IDSMs currently operating under the Rule, the vast majority of costs associated with this requirement are the fees paid to the auditors and their staffs to perform the annual audit. Representatives of the IDSMs estimated a combined cost of $300,000 for both IDSMs currently operating under the Rule

Other non-labor costs: $29,000 in copying costs. This total is based on estimated copying costs of 7 cents per page and several conservative assumptions. Staff estimates that the average dispute-related file is 35 pages long and that a typical annual audit file is approximately 200 pages in length. As discussed above, staff assumes that twenty percent of consumers using an IDSM currently operating under the Rule (approximately 4,896 consumers) request copies of the records relating to their disputes.

Staff also estimates that a very small minority of consumers request a copy of the annual audit. This assumption is based on (1) the number of consumer requests actually received by the IDSMs in the past; and (2) the fact that the IDSMs' annual audits are available online. For example, annual audits are available on the FTC's web site, where consumers may view and or print pages as needed, at no cost to the IDSM. In addition, the Better Business Bureau makes available on its web site the annual audit of the BBB AUTO LINE. Therefore, staff conservatively estimates that only five percent of consumers using an IDSM covered by the Rule (approximately 1,224 consumers) will request a copy of the IDSM's audit report.

Thus, the total annual copying cost for dispute-related files is approximately $11,995 (35 pages per file x $.07 per page x 4,896 consumer requests) and the total annual copying cost for annual audit reports is approximately $17,136 (200 pages per audit report x $.07 per page x 1,224 consumer requests). Accordingly, the total cost attributed to copying under the Rule is approximately $29,131 and the total non-labor cost under the Rule is approximately $329,131 ($300,000 for auditor fees + $29,131 for copying costs).

William Blumenthal

General Counsel

[FR Doc. E7–21399 Filed 10–30–07: 8:45 am]

[Billing Code: 6750 – 01–S]

GENERAL SERVICES ADMINISTRATION

Temporary Duty and Relocation Travel of Employees to Areas Impacted by the Wildfires in California

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Notice of Federal Travel Regulation (FTR) Bulletin 08–02.

SUMMARY: The General Services Administration (GSA) has issued FTR Bulletin 08–02. FTR Bulletin 08–02 informs agencies that certain provisions of the FTR governing the authorization of actual subsistence expenses for official travel (both TDY and relocation) are temporarily waived as a result of the Emergency Declaration signed by the President on October 23, 2007, in response to wildfires in parts of California. It is expected that finding lodging facilities and/or adequate meals in the affected areas may be difficult, and distances involved may be great resulting in increased costs for per diem expenses. FTR Bulletin 08–02 became effective on October 24, 2007 and will remain effective until January 24, 2008, unless extended or rescinded by GSA. This bulletin and all FTR bulletins are located at *gsa.gov/bulletin*.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Patrick McConnell, Office of Governmentwide Policy, General Services Administration, Washington, DC 20405, telephone (202) 501–2362, or by email at *patrick.mcconnell@gsa.gov*.

Dated: October 25, 2007.

Russ Pentz,

Assistant Deputy Associate Administrator.

[FR Doc. E7–21393 Filed 10–30–07; 8:45 am]

BILLING CODE 6820–14–S

GENERAL SERVICES ADMINISTRATION

Premium Fuel Purchases for Government Owned and Leased Vehicles Due to Market Shortages in Parts of California Affected by Wildfires

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Notice of Federal Management Regulation (FMR) Bulletin B–16.

SUMMARY: The General Services Administration (GSA) has issued Bulletin B–16 which provides a deviation for executive agencies to purchase premium fuel for Government owned and leased vehicles when lower grade fuels are not available due to market shortages in parts of California affected by wildfires. FMR Bulletin B–16 became effective on October 24, 2007 and will remain effective until January 24, 2008, unless extended or rescinded by GSA. This bulletin and all FMR bulletins are located at *gsa.gov/bulletin*.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Janet Dobbs, Office of Governmentwide Policy, General Services Administration, Washington, DC 20405, telephone (202) 208–6601, or by email at *janet.dobbs@gsa.gov*.

Dated: October 25, 2007.

Russ Pentz,

Assistant Deputy Associate Administrator.

[FR Doc. E7–21418 Filed 10–30–07; 8:45 am]

BILLING CODE 6820–14–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–08–07AV]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Academic Centers of Excellence on Youth Violence Prevention Program Information System—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention.

Background and Brief Description

Eight Academic Centers of Excellence on Youth Violence Prevention (ACEs) and two Urban Partnerships—Academic Centers of Excellence on Youth Violence Prevention (U–PACEs) are currently funded through CDC to foster and promote a stable, visible, long term strategy to address the complex problem of youth violence. The centers work with community members and many educational, justice and social work partners to develop action plans, partnerships, and priorities to prevent youth violence in a local community.

In addition, one ACE Coordinating Center is funded to initiate, foster, and support coordinated efforts, including the development and dissemination of activities and products in youth violence research and practice, among the ACEs, UPACEs, and CDC. It also aims to facilitate increased collaboration among organizations working to prevent youth violence to support the sustainability of youth violence prevention programs.

The Academic Centers of Excellence on Youth Violence Prevention Program Information System will collect, in electronic format: (a) Data needed to measure progress toward, or achievement of, performance indicators and other outcomes and (b) information on Academic Centers of Excellence on Youth Violence Prevention that is currently being collected in various electronic and paper documents. The clerical staff or Program Managers (n=11) will complete the majority of the system. The principal investigators (n=11) will review the information in the system and add details related to study design and outcomes of projects, as necessary.

An Internet-based information system will allow CDC to monitor, and report on, ACE activities more efficiently. Data reported to CDC through the ACE information system will be used by CDC to identify training and technical assistance needs, monitor compliance with cooperative agreement requirements, evaluate the progress made in achieving center-specific goals, and obtain information needed to respond to Congressional and other inquiries regarding program activities and effectiveness.

There are no costs to respondents except their time to enter data into the Information System.

The total estimated annualized burden hours are 161.

ESTIMATED ANNUALIZED BURDEN

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)
Clerical	11	2	320/60
Directors/Principal Investigators	11	2	120/60

Dated: October 23, 2007.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E7–21415 Filed 10–30–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–08–0199]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project: Importation of Etiologic Agents, Hosts, and Vectors of Human Disease (42 CFR Part 71.54)—(OMB Control No. 0920–0199)—Extension—Office of the Director (OD), CDC. The Foreign Quarantine Regulations (42 CFR Part 71) set forth provisions to prevent the introduction, transmission, and spread of communicable disease from foreign countries into the United States. Subpart F—Importations—contains provisions for importation of etiologic agents, hosts, and vectors (42 CFR 71.54), requiring persons that import or distribute after importation these materials to obtain a permit issued by the CDC. This request is for the information collection requirements contained in 42 CFR 71.54 for issuance of permits by CDC to importers or distributors after importation of etiologic agents, hosts, or vectors of human disease.

CDC is requesting continued OMB approval to collect this information through the use of two separate forms. On an annual basis, approximately 2,300 laboratory facilities complete these forms to receive permits issued by CDC. These forms are: (1) Application for Permit to Import or Transport Etiologic Agents, Hosts, or Vectors of Human Disease and (2) Application for Permit to Import or Transport Live Bats.

The Application for Permit to Import or Transport Etiologic Agents, Hosts, or Vectors of Human Disease will be used by laboratory facilities, such as those operated by government agencies, universities, research institutions, and zoologic exhibitions, and also by importers of nonhuman primate trophy materials, such as hunters or taxidermists, to request permits for the importation and subsequent distribution after importation of etiologic agents, hosts, or vectors of human disease. The Application for Permit to Import or Transport Etiologic Agents, Hosts, or Vectors of Human Disease requests applicant and sender contact information; description of material for importation; facility isolation and containment information; and personnel qualifications. Estimated average time to complete this form is 20 minutes.

The Application for Permit to Import or Transport Live Bats will be used by laboratory facilities such as those operated by government agencies, universities, research institutions, and

zoologic exhibitions entities to request importation and subsequent distribution after importation of live bats. The Application for Permit to Import or Transport Live Bats requests applicant and sender contact information; a description and intended use of bats to be imported; facility isolation and containment information; and personnel qualifications.

There is no cost to respondents other than their time to complete the form. The total estimated annualized burden hours are 767.

ESTIMATED ANNUALIZED BURDEN

Respondents	Number of respondents	Responses per respondent	Average hourly burden
Applicants for 71.54 Application Permit	2,300	1	20/60
Total	2,300		

Dated: October 23, 2007.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E7–21416 Filed 10–30–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–08–06BS]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

OWCD Professional Training Program Online Application System—New—Office of Workforce and Career Development (OWCD), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The mission of the Career Development Division (CDD), Office of Workforce and Career Development (OWCD), is to prepare an applied public health workforce through training and service. Professionals in public health, epidemiology, medicine, economics, information science, veterinary medicine, nursing, public policy and other related professions seek opportunities to broaden their knowledge and skills to improve the science and practice of public health. Each year CDC's professional training programs receive approximately 685 applications from potential candidates for review and selection. Approximately 230 fellows graduate from these programs each year, and there are approximately 2,700 Epidemic Intelligence Service (EIS) and Preventive Medicine Residency/Fellow (PMR/F) alumni.

The purpose of this project is to efficiently and effectively recruit and select qualified individuals to participate in the CDD professional training programs by collecting information through an online application management system. Alumni of these programs will be asked to update their profiles every three years.

This online application provides the CDD with the information necessary to recruit qualified professionals to participate in public health professions training programs to build critical public health workforce capacity in epidemiology, preventive medicine, prevention effectiveness/health economics, public health informatics, and public health management and leadership. Further benefit from this online application is the reduction of duplicate candidate records as well as agency resources to administer and process paper records.

The application process includes the following: Submission of the responses to the questions in the online application; submission of academic transcripts, professional credentials, and letters of recommendation; a review by selected programmatic staff and expert panel members; selection of qualified candidates for interview; interview of candidates; and selection of trainees for programs.

The online application questions ask for demographic data, academic history, professional experience, references and description of professional goals. The application questions and data collected are necessary to the application process to determine programmatic eligibility and to ensure that the most highly qualified candidates are chosen for the training programs.

With the exception of their time, the cost to the candidates is minor. One expense depends on their academic institutions since they must obtain and submit all their academic transcripts. Another expense depends on the cost to obtain and submit other professional credentials including professional licenses and certifications. The final expense is the cost to submit letters of recommendation. The total estimated annualized burden in hours is 740.

ESTIMATED ANNUALIZED BURDEN

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Fellowship Applicants	685	1	40/60
Fellowship and EIS–PMR/F Alumni	1130	1	15/60

Dated: October 25, 2007.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E7–21423 Filed 10–30–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Fees for Sanitation Inspections of Cruise Ships [Correction]

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice Correction.

SUMMARY: Correction: This notice was published in the **Federal Register** on October 4, 2007, Volume 72, Number 192, page 56768. The contact e-mail address should read as follows: *Jfa0@cdc.gov*

FOR FURTHER INFORMATION CONTACT: Jaret Ames, Chief, Vessel Sanitation Program, National Center for Environmental Health, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop F–23, Atlanta, Georgia 30341–3724, telephone (770) 488–3139, E-mail: *jfa0@cdc.gov.*

Dated: October 24, 2007.

James D. Seligman,

Chief Information Officer, Centers for Disease Control and Prevention (CDC).

[FR Doc. E7–21398 Filed 10–30–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Notice to Administratively Impose a Matching Requirement

AGENCY: Division of Grants Policy, Office of Financial Services, Office of Administration, Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Administration for Children and Families (ACF) hereby gives notice to the public that certain programs within the Agency will be administratively imposing a matching requirement on grants awarded under the following program titles and funding opportunity announcements for Fiscal Year 2008:

ACF program office	Program title	CFDA No.	Funding opportunity title and No.	Amount of cost share as % of total project cost	Acceptable types non-federal resources
Office of Child Support Enforcement.	Child Support Enforcement Research.	93.564	Section 1115 Demonstration Grants HHS–2008–ACF–OCSE–FC–0006.	5	Cash is preferred and In-Kind resources from public entities only are accepted.
Administration for Children, Youth and Families/Children's Bureau.	Promoting Safe and Stable Families.	93.556	Multiple Program Announcements.	10	Cash and In-Kind.
	Abandoned Infants Assistance.	93.551			
	Child Welfare Service Training Grants.	93.648			
	Adoption Opportunities ...	93.652			
	Child Abuse and Neglect Discretionary Activities.	93.670			
Office of Planning, Research and Evaluation.	Child Care and Development Block Grant.	93.575	Child Care Policy Research Grants HHS–2008–ACF–OPRE–YE–0013. Child Care State Research Capacity Cooperative Agreements HHS–2008–ACF–OPRE–YE–0031.	20	Cash and In-Kind.
	Temporary Assistance for Needy Families.	93.558	Federal-State Partnerships to Build Capacity in the Use of TANF and Related Administrative Data HHS–2008–ACF–OPRE–PD–0059.	5	Cash and In-Kind.
Office of Community Services.	Compassion Capital Fund (CCF).	93.009	Intermediary Demonstration Program HHS–2008–ACF–OCS–EJ–0035.	20	Cash and In-Kind.

ACF program office	Program title	CFDA No.	Funding opportunity title and No.	Amount of cost share as % of total project cost	Acceptable types non-federal resources
Administration on Developmental Disabilities.	Developmental Disabilities Projects of National Significance.	93.631	Family Support 360 HHS–2008–ACF–ADD–DN–0009. Projects for Youth Information, Training and Resource Centers for Youth and Emerging Leaders with Developmental Disabilities HHS–2008–ACF–ADD–DN–0018.	25	Cash and In-Kind.

Historically, ACF has found that the imposition of a matching requirement on awards under these programs results in an increased level of community support and, often, a higher profile in the community. This can contribute to the success and sustainability of the project. The Fiscal Year 2008 funding opportunity announcements for each listed program will advise applicants on the percentage of funds that must be contributed through non-Federal resources, the composition of the match, and the merit of the match as a criterion in the competitive review. The amount and acceptable types of non-Federal resources allowed is not negotiable. However, matching may be provided as direct or indirect costs. The presence and composition of matching funds may be used as a criterion in evaluating the merits of an application during competitive review. Specific information related to the matching requirement and competitive review will be provided in the specific funding opportunity announcement. Unmatched Federal funds will be disallowed. Costs borne by matching contributions are subject to the rules governing allowability found under 45 CFR 74.23 and 45 CFR 92.24.

FOR FURTHER INFORMATION CONTACT: Melody Wayland, Office of Administration, Office of Financial Services Division of Grants Policy, 370 L'Enfant Promenade, SW., 6th Floor East, Washington, DC 20447, or by telephone at 202–401–5714 or *mwayland@acf.hhs.gov.*

Dated: October 24, 2007.

Curtis L. Coy,

Deputy Assistant Secretary for Administration, Administration for Children and Families.

[FR Doc. E7–21344 Filed 10–30–07; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004D–0484]

Guidance for Industry on the Role of Human Immunodeficiency Virus Resistance Testing in Antiretroviral Drug Development; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''Role of HIV Resistance Testing in Antiretroviral Drug Development.'' This guidance is intended to assist sponsors in the clinical development of drugs for the treatment of human immunodeficiency virus (HIV) infection. Specifically, this guidance addresses the agency's current thinking regarding the role of HIV resistance testing during antiretroviral drug development and postmarketing. This guidance discusses important nonclinical studies that are recommended before the initiation of phase 1 clinical studies in HIV-infected patients. In addition, this guidance addresses the use of resistance testing in clinical phases of drug development and recommends the type of information that should be collected and the types of analyses that should be conducted to characterize an antiretroviral's resistance profile. This guidance finalizes the draft guidance published on November 29, 2004.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments* or *http://www.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Jeffrey Murray, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 6360, Silver Spring, MD 20993–0002, 301–796–1500, or

Kimberly Struble, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 6374, Silver Spring, MD 20993–0002, 301–796–1500.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Role of HIV Resistance Testing in Antiretroviral Drug Development.'' This guidance is intended to assist sponsors in the clinical development of drugs for the treatment of HIV infection. Specifically, this guidance addresses the agency's current thinking regarding the role of HIV resistance testing during antiretroviral drug development and postmarketing. This guidance discusses the nonclinical studies (mechanism of action, antiviral activity in vitro, the effects of serum protein binding on antiviral activity, cytotoxicity and therapeutic index, and in vitro combination activity) that should be completed before the initiation of phase 1 clinical studies in HIV-infected patients. In addition, this guidance

addresses the use of resistance testing in clinical phases of drug development and recommends the type of information that should be collected and the types of analyses that should be conducted to characterize an antiretroviral's resistance profile. This guidance also is intended to serve as a focus for continued discussions among the Division of Antiviral Products, pharmaceutical sponsors, the academic community, and the public.

This guidance is based on a 2-day session of the Antiviral Drug Product Advisory Committee convened on November 2 and 3, 1999, to address issues relating to HIV resistance testing, the division's experience with reviewing resistance data for antiretroviral drugs, and input from pharmaceutical sponsors and the HIV community.

This guidance has been updated to address public comments on the draft version. The following significant changes were made to the guidance: (1) The inclusion of more details and clarification on the recommendations about the amount and type of nonclinical studies that should be conducted before phase 1 clinical studies, (2) the inclusion of more details and clarification regarding data collection and types of analyses for treatment-naïve and treatment-experienced patients, (3) the inclusion of additional details regarding exposure-response analyses, and (4) updated guidance for submitting HIV resistance data.

The guidance reviews the role of resistance testing in initial activity and dose-finding studies, for study enrollment criteria, and background regimen selection. The guidance also reviews the use of resistance data to establish an indication. This guidance includes an appendix that provides recommendations on how to submit HIV resistance data to FDA.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on the role of HIV resistance testing in antiretroviral drug development. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 312 have been approved under OMB control number 0910–0014.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: October 24, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–21403 Filed 10–30–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2002D–0049 (formerly Docket No. 02D–0049)]

Draft Guidance for the Public, Food and Drug Administration Advisory Committee Members, and Food and Drug Administration Staff: Public Availability of Advisory Committee Members' Financial Interest Information and Waivers; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance document for the public, FDA advisory committee members, and FDA staff entitled ''Guidance for the Public, FDA Advisory Committee Members, and FDA Staff: Public Availability of Advisory Committee Members' Financial Interest Information and Waivers.'' This guidance is intended to help the public, FDA advisory committee members, and FDA staff to understand and implement FDA procedures regarding public availability of information regarding certain financial interests and waivers granted by FDA to permit individuals to participate in an advisory committee meeting. The draft guidance announced in this notice supersedes FDA's ''Draft Guidance on Disclosure of Conflicts of Interest for Special Government Employees Participating in FDA Product Specific Advisory Committees,'' dated January 2002.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115 (g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by December 31, 2007.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Office of Policy (HF–11), Office of the Commissioner, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit telephone requests to 800–835–4709 or 301–827–1800.

Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to either *http://www.fda.gov/dockets/ecomments* or *http://www.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Jill Hartzler Warner, Office of Policy and Planning (HF–11), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3370.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance entitled ''Guidance for the Public, FDA Advisory Committee Members, and FDA Staff: Public Availability of Advisory Committee Members' Financial Interest Information and Waivers,'' dated October 2007. FDA's advisory committees provide independent and expert advice on scientific, technical, and policy matters related to the development and evaluation of products regulated by FDA. FDA implements a rigorous process for soliciting and vetting candidates for advisory committee meetings to minimize any potential for financial conflicts of interest. The agency is authorized by statute to grant waivers to allow individuals with potentially conflicting financial

interests to participate in meetings where we conclude, after close scrutiny, that certain criteria are met. (See 18 U.S.C. 208(b)(1) and (b)(3) and section 712(c)(2)(B) of the Federal Food, Drug, and Cosmetic Act (the act) (added by the Food and Drug Administration Amendments Act of 2007 (Public Law No. 110–85), section 701 (effective October 1, 2007).)

In the **Federal Register** of January 12, 2002 (67 FR 6545), FDA issued ''Draft Guidance on Disclosure of Conflicts of Interest for Special Government Employees Participating in FDA Product Specific Advisory Committees,'' and requested comments on the draft guidance (Docket No. 02D–0049). The draft guidance was limited in application to special government employees (SGEs) participating in advisory committee meetings at which particular matters relating to particular products were discussed.

FDA has recently undertaken an internal assessment of its advisory committee process. As a result of this review, and based on the comments submitted to the docket for the January 2002 draft guidance, FDA is revising this draft guidance to broaden its applicability, bring as much transparency as possible to FDA's waiver process, and increase the consistency and clarity of the process. The draft guidance proposes revised procedures, consistent with section 712(c)(3) of the act, to make publicly available relevant information regarding financial interests and waivers granted by the agency for SGEs and regular Government employees invited to participate in FDA advisory committee meetings.

The draft guidance also includes a template for disclosing to the public the disqualifying financial interests for which waivers are sought and a template for all waivers that FDA grants. The guidance further describes FDA's process for making these documents available on its Web site in advance of each advisory committee meeting.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance represents the agency's current thinking on public availability of information regarding advisory committee members' financial interests and waivers granted by FDA to permit participation in advisory committee meetings. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 24, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 07–5408 Filed 10–29–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Immunostimulatory Combinations of TLR Ligands and Methods of Use

Description of Technology: New drugs or therapies that act by stimulating the immune system, or alternatively inhibiting certain aspects of the immune system, may be useful for treating various diseases or disorders, for example viral diseases, neoplasias, and/or allergies, and may also have use as vaccine adjuvants. However, although adjuvants have been suggested for use in vaccine compositions, there is an unmet need for adjuvants that can effectively enhance immune response.

Development of innate and adaptive immunity critically depends on the engagement of pattern recognition receptors (PRRs), which specifically detect microbial components named pathogen- or microbe-associated molecular patterns (PAMPs or MAMPs) (1–4). Toll-like receptors (TLRs) represent an important group of PRRs that can sense PAMPs or MAMPs once in the body. TLRs are widely expressed by many types of cells, for example cells in the blood, spleen, lung, muscle and intestines.

The present invention claims immunostimulatory combinations of TLR ligands and therapeutic and/or prophylactic methods that include administering an immunostimulatory combination to a subject. In general, the immunostimulatory combinations can provide an increased immune response compared to other immunostimulatory combinations and/or compositions. More specifically, combinations of TLR 2, 3 and 9 are claimed. The application also describes a novel mechanism for TLR synergy in terms of both signaling pathways and cytokine combinations.

Application: Development of improved adjuvants and/or synergistic combinations of adjuvants for vaccines.

Developmental Status: Compositions have been synthesized and preclinical studies have been performed.

Inventors: Jay Berzofsky and Qing Zhu (NCI).

Patent Status: U.S. Provisional Application filed 24 Sep 2007 (HHS Reference No. E–298–2007/0–US–01).

Licensing Status: Available for exclusive or nonexclusive licensing.

Licensing Contact: Peter A. Soukas, J.D.; 301/435–4646; *soukasp@mail.nih.gov.*

Collaborative Research Opportunity: The National Cancer Institute's Vaccine Branch is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this invention of synergistic combinations of TLR ligands. Please contact John D. Hewes, PhD at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Cellular Receptor for Varicella-Zoster Virus, Methods of Inhibiting Spread of Varicella-Zoster and Methods of Increasing Stability and Infectivity of the Virus

Description of Technology: This technology relates to identification of insulin degrading enzyme (IDE) as a cellular receptor for Varicella-Zoster-Virus (VZV), the etiologic agent of varicella (chickenpox) and zoster (shingles). Acute infection of VZV is followed by cell-associated viremia and the development of varicella rash. The virus establishes life-long latency in the nervous system and can reactivate to cause zoster. The mechanism of VZV entry into target cells and spread from cell-to-cell is not well understood. The inventors have shown that antibodies to IDE and soluble IDE partially inhibit infection with the virus in cell culture. Reducing the level of IDE in the cell (with siRNA), or blocking the ability of IDE to bind with a VZV glycoprotein, markedly diminishes cell-to-cell spread of the virus in cell culture and partially inhibits infection of cells with cell-free virus. This invention further describes molecules that may have a role in the treatment or prevention of VZV infections, including antibodies to IDE, peptides that block IDE-VZV interactions, and other molecules that block binding activity of IDE.

Applications: Treatment and prevention of varicella zoster virus infection.

Market: Prophylactics and therapeutics for chickenpox and shingles.

Development Status: Early-stage technology.

Inventors: Jeffery Cohen and Qingxue Li (NIAID).

Patent Status: U.S. Provisional Application No. 60/684,526 filed 26 May 2005 (HHS Reference No. E–289–2004/0–US–01); PCT Application No. PCT/US2006/020514 filed 26 May 2006 (HHS Reference No. E–289–2004/0–PCT–02).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Chekesha S. Clingman, PhD; 301/435–5018; *clingmac@mail.nih.gov.*

Collaborative Research Opportunity: The NIAID Laboratory of Infectious Diseases, Medical Virology Section, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact Dr. Jeffrey Cohen at *jcohen@niaid.nih.gov* for more information.

An HIV Protein for Use as a Novel Therapeutic or Vaccine Component

Description of Technology: Latent HIV presents a challenge for complete removal of the virus in infected individuals and is becoming an increasingly important consideration in the identification of potential HIV therapeutics or treatment regimens. These transcriptionally inactive HIV reservoirs lay dormant in a portion of infected cells and are capable of evading both host defenses and existing antiretroviral therapy. The present technology offers a potential solution for complete eradication of HIV in infected individuals.

This technology describes immunogenic and therapeutic compositions related to HIV p28TEV protein, the first protein expressed during HIV infection in the case of the pHXB2 isolate. p28TEV functions in the regulation of HIV transcription and may be important for the expression of latent virus. A number of p28TEV associated compositions are available for licensing and commercial development including: (1) The p28TEV polypeptide from one or more HIV clades, (2) nucleic acids encoding these p28TEV polypeptides, (3) a polypeptide with significant sequence homology to p28TEV, and (4) immunogenic fragments of these polypeptides. Additional compositions include antibodies and antagonists that act to inhibit p28TEV activity. Adjuvants, immunomodulators and compounds used in combination with p28 TEV for the treatment of HIV infection are also included in the available technology.

Applications: Novel therapeutics for treatment of HIV infection; Novel HIV vaccine component.

Development Status: Preclinical data are available at this time.

Inventors: Genoveffa Franchini *et al.* (NCI).

Patent Status: U.S. Patent Application No. 11/364,873 filed 27 Feb 2006 (HHS Reference No. E–072–2004/3–US–01); PCT Application No. PCT/US2007/0004694 filed 23 Feb 2007, which published as WO 2007/098257 on 30 Aug 2007 (HHS Reference No. E–072–2004/4–PCT–01).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Susan Ano, PhD; 301/435–5515; *anos@mail.nih.gov.*

Collaborative Research Opportunity: The National Cancer Institute Vaccine Branch is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize Methods of Targeting the Establishment of the HIV Viral Reservoir. Please contact John D. Hewes, PhD at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Methods for Identifying Cathepsin G-Related Peptides as Modulators of Formylpeptide Receptors

Description of Technology: Available for licensing and commercial development are methods for identifying peptides of Cathepsin G (CaG), or active variants thereof, which modulate activities of the receptor for bacterial chemotactic formyl peptides (FPR), including chemotactic behavior. It provides methods of designing therapeutic approaches related to the host defense based on the interaction of CaG and FPR, as CaG binds to FPR to mediate the proinflammatory activities of CaG. The inventive aspects relate to the finding that CaG induces a more partial and selective effects upon activation of FPR to mediate a certain and more limited immunological activity than other agonists that are also capable of binding FPR. The limitations in the activity include not inducing calcium flux, having only a weak activation of mitogen-activated protein kinases (MAPKs), and being able to activate certain types of atypical protein kinase C (PKC), such as PKCξ, while not activating PKCα and PKCβ. These limitations are advantageous in attempting to limit the response in mobilizing the phagocytic leukocyte infiltration to mediate the clearance and repair of damaged tissue while not amplifying the general inflammatory response, which may result in damage to healthy and normal tissue.

Applications: Identification of peptides of Cathepsin G that activate certain types of atypical protein kinase C, such as PKCξ, while not activating PKCα and PKCβ, to limit the response in mobilizing the phagocytic leukocyte infiltration while not amplifying the general inflammatory response.

Inventors: Ji Ming Wang, Ronghua Sun, Joost Oppenheim, Ye Zhou (NCI).

Relevant Publication: R Sun *et al.* Identification of neutrophil granule protein cathepsin G as a novel chemotactic agonist for the G protein-coupled formyl peptide receptor. J Immunol. 2004 Jul 1;173(1):428–436.

Patent Status: U.S. Patent Application No. 11/154,744 filed 17 Jun 2005, entitled ''Cathepsin G-Related Peptides as Modulators of Formylpeptide Receptors (FPR),'' published as U.S. 20060008891 (HHS Reference No. E–281–2003/2–US–01).

Licensing Status: Available for non-exclusive or exclusive licensing.

Licensing Contact: Cristina Thalhammer-Reyero, Ph.D., M.B.A.; 301/435–4507; *thalhamc@mail.nih.gov.*

Dated: October 24, 2007.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E7–21370 Filed 10–30–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Systemic Lupus Erythematosus Study.

Date: November 14, 2007.

Time: 10 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, 800, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Michael L. Bloom, PhD, MBA., Scientific Review Administrator, EP Review Branch, NIH/NIAMS, One Democracy Plaza, Room 820, MSC 4872, 6701 Democracy Blvd, Bethesda, MD 20892–4872, 301–594–4953, *Michael_Bloom@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: October 24, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–5391 Filed 10–30–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute On Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, I/START Review.

Date: November 9, 2007.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852. (Virtual Meeting)

Contact Person: Mark Swieter, PhD, Chief, Training and Special Projects Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, 6101 Executive Boulevard, Suite 200, Bethesda, MD 20892–8401, (301) 435–1389, *ms80x@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: October 24, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–5392 Filed 10–30–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Depression and Stroke.

Date: October 30, 2007.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: David J. Sommers, PhD, Scientific Review Administration, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9606, 301–443–7861, *dsommers@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Social Phobia Treatment.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Social Phobia Treatment.

Date: November 5, 2007.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: David J. Sommers, PhD, Scientific Review Administration, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9606, 301–443–7861, *dsommers@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: October 24, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–5393 Filed 10–30–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Mental Health.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Mental Health, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Mental Health.

Date: November 27–28, 2007.

Time: November 27, 2007, 7 p.m. to 10 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Hilton Washington DC/Rockville Meeting Center, 1750 Rockville Pike, Rockville, MD 20852.

Time: November 28, 2007, 8:30 a.m. to 1 p.m.

Agenda: To review and evaluate the Section on Directed Gene Transfer, Section on Neurocircuitry, Section on Functional Imaging Methods, and Section on Cognitive Neuropsychology.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room C, Rockville, MD 20852.

Time: November 28, 2007, 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate the Training Fellows and Staff Scientists.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room C, Rockville, MD 20852.

Time: November 28, 2007, 2:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room C, Rockville, MD 20852.

Contact Person: Richard K. Nakamura, PhD, Acting Scientific Director, Division of Intramural Research Programs, National Institutes of Mental Health, NIH, 10 Center Drive, Room 4N222, MSC 1381, Bethesda, MD 20892–1381, 301–496–4183, *rnakamur@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: October 24, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–5394 Filed 10–30–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, The Central Medulla and the Sudden Infant Death Syndrome.

Date: November 16, 2007.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, 5B01, Rockville, MD 20852, (*Telephone Conference Call*).

Contact Person: Gopal M. Bhatnagar, PhD, Scientific Review Administrator, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Bldg Rm 5B01, Rockville, MD 20852, (301) 435–6889, *bhatnagg@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 24, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–5395 Filed 10–30–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of Biotechnology Activities; Recombinant DNA Research: Action Under the NIH Guidelines for Research Involving Recombinant DNA Molecules (NIH Guidelines)

AGENCY: National Institutes of Health (NIH), PHS, DHHS.

ACTION: Notice of final action under the *NIH Guidelines.*

SUMMARY: Specific proposals to conduct research involving the deliberate transfer of a drug resistance trait to a microorganism that causes disease in humans have been reviewed by the Recombinant DNA Advisory Committee (RAC) and approved by the NIH Director. Approval of these experiments constitutes a Major Action under section III–A–1 of the *NIH Guidelines.*

DATES: This final action is effective September 24, 2007.

FOR FURTHER INFORMATION: Background documentation and additional information can be obtained from the Office of Biotechnology Activities (OBA), National Institutes of Health, 6705 Rockledge Drive, Suite 750, MSC 7958, Bethesda, Maryland 20892–7958; e-mail at *oba@od.nih.gov,* or telephone at 301–496–9838. The NIH/OBA Web site is located at: *http://www4.od.nih.gov/oba/.*

SUPPLEMENTARY INFORMATION: This final action allows Dr. Dan Rockey and Dr. Walter Stamm (at Oregon State University and the University of Washington, respectively) to deliberately transfer a gene encoding tetracycline resistance from *Chlamydia suis* (a swine pathogen) into *C. trachomatis* (a human pathogen). This approval is specific to Drs. Rockey and Stamm and research with these resistant organisms may only occur under the conditions outlined below. It should be

noted that any work involving the introduction of tetracycline resistance into Chlamydia by other investigators would need to be reviewed by the RAC and specifically approved by the NIH Director.

Background Information and Response to Comments

On May 9, 2007, background on the proposed action, and information on how to submit public comment, was published in the **Federal Register** (72 FR 26415). On June 20, 2007, the RAC discussed the proposed action at its quarterly public meeting and reviewed the one public comment received. The RAC recommended to the NIH Director that this work be allowed to proceed under Biosafety level (BL) 2+ containment with additional provisions/stipulations. On September 24, 2007, the NIH Director approved the proposed experiments with the following conditions.

(1) Tetracycline resistance will only be introduced into non-ocular strains of *C. trachomatis.* In conducting this work on tetracycline resistance in *C. trachomatis,* the following containment standard must be followed:

(2) All research involving the introduction of tetracycline resistance into *C. trachomatis* must be performed at BL 2 using BL3 practices (referred to as BL2+). The *NIH Guidelines* articulates requirements for BL2 laboratory facilities and equipment in Appendices G–II–B–3 and G–II–B–4 while BL3 practices are described in Appendices G–II–C–1 and C–2 of the *NIH Guidelines.* Specifically, the following BL3 practices must be followed:

(a) Access must be restricted to well-trained personnel whose presence is required for the conduct of this work, and

(b) The investigators must use sealed centrifuge rotors and tubes.

(3) In addition, the following procedures and practices must be followed:

(a) Cup sonication must be used rather than probe sonication to separate the infectious form [elementary bodies (EB)] from the metabolically active [reticulate bodies (RB)] form of the bacterium.

(b) If possible, consider using other techniques that do not involve the potential for the generation of aerosols, such as freeze-thaw, to separate EBs from RBs.

(c) No work with the *Chlamydia* serovars A, B, or C, which cause the ocular disease trachoma, may be conducted in the same laboratory in which tetracycline resistance is being introduced into *C. trachomatis* serovars that cause genital disease (L, E and G).

(d) An assay to detect the tetracycline resistant genetic element should be developed so that, in the event of a laboratory acquired infection, it will be possible to determine whether the genetically modified strain of *Chlamydia* is the source of the infection.

(e) The following preventive health surveillance steps should be implemented for any member of the laboratory working with tetracycline resistant *C. trachomatis:*

(i) In addition to being trained on proper biosafety practices, laboratory workers must be provided education on the possible clinical manifestations of laboratory acquired chlamydial infection.

(ii) Each laboratory must have a detailed, written action plan outlining the specific steps to be taken in the case of a laboratory exposure or infection. This plan should include at a minimum:

(1) Identification of key personnel who would provide diagnostic testing and treatment;

(2) Instructions on managing exposures or infections discovered during off hours (after close of business, holidays, weekends, etc.);

(3) Specific recommendations for managing azithromycin-allergic or sensitive lab workers; and a provision *excluding individuals with known macrolide antibiotic allergies from working on these experiments;*

(4) Specific recommendations for treatment of infected laboratory personnel who develop side effects while being treated with azithromycin, and

(5) Specific precautions to be taken by infected laboratory workers with respect to protecting close contacts (e.g. family members) from further infection.

(iii) In order to ensure that laboratory members will receive adequate healthcare in the event of infection, an outreach program should be developed to inform healthcare providers who may treat laboratory members about the diagnosis and treatment of tetracycline-resistant *Chlamydia.* In addition, members of the laboratory should be provided with a medical card that includes at least the following information:

(1) Identification of the personnel responsible for providing diagnosis and treatment;

(2) A CDC telephone number for reporting the infection and obtaining treatment recommendations, and

(3) A twenty-four hour contact number for the principal investigators.

(4) Finally, if tetracycline resistant *C. trachomatis* is transferred to other laboratories, the investigators working with this tetracycline resistant *Chlamydia* must follow the identical practices and procedures set forth by the NIH Director. It is the responsibility of Dr. Rockey and Dr. Stamm to ensure and document that the investigators to whom they transfer these strains are apprised of and agree to abide by these requirements. As noted, however, since the NIH Director's approval for the de novo creation of tetracycline resistant strains of non-ocular serovars of *C. trachomatis* applies only to experiments conducted by Drs. Rockey and Stamm, any work involving the introduction of tetracycline resistance into Chlamydia by other investigators would need to be reviewed by the RAC and specifically approved by the NIH Director.

Dated: October 23, 2007.

Amy P. Patterson,

Director, Office of Biotechnology Activities, National Institutes of Health.

[FR Doc. E7–21404 Filed 10–30–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2007–0072]

Science and Technology Directorate; Submission for Review; DHS S&T BAA Web Site Registration Form; DHS S&T BAA Registration Form; DHS S&T BAA White Paper and Proposal Submission Form; DHS S&T RFI Response Form

AGENCY: Science and Technology Directorate, DHS.

ACTION: 30-day Notice and request for comment.

SUMMARY: The Department of Homeland Security (DHS) invites the general public to comment on new data collection forms for collecting Request for Information (RFI) responses and unclassified white papers and proposals through the Broad Agency Announcement (BAA) Web site. The forms will standardize the collection of information that is both necessary and sufficient for the DHS S&T Directorate to record and track the receipt of RFI responses, unclassified white papers, and proposals. As explained herein, these forms are intended to eliminate cost and delay associated with the submission and review of documents received via non-electronic means and to improve tracking and records keeping. The Department is committed to improving its BAA processes and invites interested persons to comment on the following forms and instructions (hereinafter ''Forms Package'') for the

(BAA) program: (1) DHS Science and Technology (S&T) BAA Web Site Registration (DHS FORM 10025), (2) DHS S&T BAA Registration (DHS FORM 10027), (3) DHS S&T BAA White Paper and Proposal Submission (DHS FORM 10026), and (4) DHS S&T RFI Response (DHS FORM 10028). This notice and request for comments is required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Comments are encouraged and will be accepted until November 30, 2007. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: You may submit comments, identified by docket number [DHS–2007–0072], by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: ken.rogers@dhs.gov.* Include docket number [DHS–2007–0072] in the subject line of the message.
- *Mail:* Science and Technology Directorate, ATTN: OCIO/Kenneth D. Rogers, 245 Murray Drive, Bldg 410, Washington, DC 20528.

FOR FURTHER INFORMATION CONTACT: Kenneth D. Rogers (202) 254–6185 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: This request for comment was previously published in the **Federal Register** on August 17, 2007, for a 60-day public comment period ending October 16, 2007. No comments were received by DHS during the 60-day comment period. The purpose of this notice is to allow an additional 30 days for public comments. This notice and request for comments is required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DHS invites the general public to comment on the new information collection forms, as described below.

Interested parties can obtain copies of the Forms Package by calling or writing the point of contact listed above.

The DHS S&T Directorate issues RFIs in accordance with Federal Acquisition Regulation (FAR) 15.201(e) and accepts responses to those RFIs from the public. DHS S&T also issues BAAs in accordance with FAR 6.102(d)(2)(i) and FAR 35.016 and accepts white papers and proposals from the public in response to those BAAs. DHS S&T evaluates white papers and proposals received from the public in response to a DHS S&T BAA using the evaluation criteria specified in the BAA through a peer or scientific review process in accordance with FAR 35.016(d). White paper evaluation determines those research ideas that merit submission of a full proposal and proposal evaluation determines those proposals that merit selection for contract award.

Unclassified white papers and proposals are typically collected via the DHS S&T BAA secure Web site, while classified white papers and proposals must be submitted via proper classified courier or classified mailing procedures as described in the National Security Program Operating Manual (NISPOM).

DHS is particularly interested in comments that:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Suggest ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Suggest ways to minimize the burden of the data collection on those who respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Overview of this Information Collection:

(1) *Type of Information Collection:* New information collection.

(2) *Title of the Form/Collection:* DHS S&T BAA Web Site Registration Form; DHS S&T BAA Registration Form; DHS S&T BAA White Paper and Proposal Submission Form; DHS S&T RFI Response Form.

(3) *Agency Form Number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* DHS Science and Technology (S&T) BAA Web Site Registration Form (DHS FORM 10025), DHS S&T BAA Registration Form (DHS FORM 10027), DHS S&T BAA White Paper and Proposal Submission Form (DHS FORM 10026), and DHS S&T RFI Response Form (DHS FORM 10028).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Individuals or households, Business or other for-profit, Not-for-profit institutions, Federal government, and State, local, or tribal government; the data gathered through the BAA Forms Package will be used to collect RFI responses and unclassified white papers and proposals through the BAA Web site.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* a. *An estimate of the total number of respondents:* 4865 Respondents. b. *Amount of time estimated for an average respondent to respond:* 1.25 burden hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,548.75 burden hours.

Dated: October 18, 2007.

Kenneth D. Rogers,

Chief Information Officer, Science and Technology Directorate.

[FR Doc. E7–21361 Filed 10–30–07; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Exxon Valdez Oil Spill Trustee Council; Notice of Meeting

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: The Department of the Interior, Office of the Secretary is announcing a public meeting of the *Exxon Valdez* Oil Spill Public Advisory Committee.

DATES: December 6, 2007, at 9 a.m.

ADDRESSES: Exxon Valdez Oil Spill Trustee Council Office, 441 West 5th Avenue, Suite 500, Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Douglas Mutter, Department of the Interior, Office of Environmental Policy and Compliance, 1689 ''C'' Street, Suite 119, Anchorage, Alaska 99501, (907) 271–5011.

SUPPLEMENTARY INFORMATION: The Public Advisory Committee was created by Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991, and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska*, Civil Action No. A91–081 CV. The meeting agenda will include review of the draft update to the Injured Resources and Service list and a discussion about recovery objectives and environmental monitoring.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. E7–21406 Filed 10–30–07; 8:45 am]

BILLING CODE 4310–RG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–930–1430–PN–252Z; CACA 42646]

Notice of Realty Action: Application for Conveyance of Mineral Interests, Madera County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: This publication supersedes in its entirety the previous publication dated October 18, 2007, found on page 59110, Volume 72, Number 201.

The surface owner of the lands described in this notice, aggregating approximately 25 acres, has filed an application for the purchase of the Federally-owned mineral interests in the lands. Publication of this notice temporarily segregates the mineral interest from appropriation under the public land laws, including the mining law.

DATES: Interested persons may submit written communication to the Bureau of Land Management (BLM) at the address stated below. Comments must be received no later than December 17, 2007.

ADDRESSES: Bureau of Land Management, 2800 Cottage Way, Sacramento, CA 95825. Detailed information concerning this action is available for review at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Gary, Land Law Examiner, at the above address, or 916–978–4677.

SUPPLEMENTARY INFORMATION: The surface owner of the following described lands has filed an application pursuant to section 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1719(b), for the purchase and conveyance of the Federally-owned mineral interest in the following described lands:

Mount Diablo Meridian, Madera County, California

T. 9 S., R. 22 E., Sec. 6, described as follows:

''All coal and other minerals within that portion of Parcel 2 of Parcel Map 2415 recorded October 24, 1985 in the office of the County Recorder, County of Madera, State of California, in Book 31, of Maps, at Page 173, that is within a portion of Lot 3 of Section 6, T. 9 S., R. 22 E., Mount Diablo Base and Meridian, according to the official plat thereof, as reserved in patent number 1096001 dated March 11, 1938, together with the right to prospect for, mine, and remove the same pursuant to the provisions and limitations of the Act of December 29, 1916 (39 Stat., 862). Containing 25 acres, more or less.''

Effective immediately, BLM will process the pending application in accordance with the regulations stated in 43 CFR Part 2720. Written comments concerning the application must be received no later than the date specified above in this notice for that purpose. The purpose for a purchase and conveyance is to allow consolidation of surface and subsurface minerals ownership where (1) there are no known mineral values, or (2) in those instances where the Federal mineral interest reservation interferes with or precludes appropriate non-mineral development and such development is a more beneficial use of the land than the mineral development.

On December 17, 2007 the mineral interests owned by the United States in the above described lands will be segregated to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. The segregative effect shall terminate upon issuance of patent or deed of such mineral interest; upon final rejection of the mineral conveyance application; or 2 years from the date of publication of this notice in the **Federal Register**, whichever occurs first.

Comments: Comments, including names, street addresses, and other contact information of respondents, will be available for public review. Before including your address, telephone 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. All persons who wish to present comments, suggestions, or objections in connection with the pending application may do so by writing to Robert M. Doyel, Chief, Branch of Lands Management, at the above mentioned address.

(Authority: 43 CFR 2720.1–1(b)).

Dated : October 25, 2007.

Robert M. Doyel,

Chief, Branch of Lands Management.

[FR Doc. E7–21395 Filed 10–30–07; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

30-Day Notice of Intention To Request Clearance of Collection of Information; Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service.

ACTION: Notice and request for comments.

SUMMARY: Consistent with the Paperwork Reduction Act of 1995 and 5 CFR Part 1320. Reporting and Record Keeping Requirements, the National Park Service (NPS) hereby publishes and invites comments on the proposed new U.S. World Heritage Tentative List (OMB #1024–0050).

DATES: Public comments on this Information Collection Request (ICR) will be accepted on or before November 30, 2007.

ADDRESSES: Send comments to: Jonathan Putnam, Office of International Affairs, NPS, 1201 Eye Street, NW., (0050), Washington, DC 20005; or via e-mail at *jonathan_putnam@nps.gov* ; or via phone at 202/354–1809; or via fax at 202/371–1446. Also, you may send comments to Leonard Stowe, NPS Information Collection Clearance Officer, 1849 C St., NW., (2605), Washington, DC 20240; or by e-mail at *leonard_stowe@nps.gov*. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Jonathan Putnam at 202/354–1809, or April Brooks at 202/354–1808. General information about the Tentative List process is posted on the Office of International Affairs Web site at *http://www.nps.gov/oia/topics/worldheritage/tentativelist.htm.* The NPS staff report, including summaries of information on each site referenced in the draft Tentative List being published in this notice, is posted in its entirety on the Internet at *http://www.nps.gov/oia/TLEssayFinal.pdf.* If you would like to review the original Applications submitted to the NPS for these candidate sites, please go to: *http://www.nps.gov/oia/NewWebpages/ApplicantsTentativeList.html.*

To Request a Paper Copy of the Staff Report on the Draft U.S. World Heritage Tentative List Contact: April Brooks, Office of International Affairs, NPS, 1201 Eye Street, NW., (0050), Washington, DC 20005; or via phone at 202/354–1808; or via e-mail at *april_brooks@nps.gov*.

SUPPLEMENTARY INFORMATION:

Title: Application for the Inclusion of a Property in the U.S. World Heritage Tentative List.

Bureau Form #(s): None.
OMB #: 1024–0050.
Expiration Date: 08/31/2009.
Type of Request: New Collection.
Description of Need: The U.S. World Heritage List is an international list of cultural and natural properties of outstanding universal value nominated by the signatories of the World Heritage Convention (1972). In 1973, the United States was the first nation to ratify the treaty. U.S. participation and the roles of the Department of the Interior and the NPS are authorized by Title IV of the Historic Preservation Act Amendments of 1980 and conducted in accordance with 36 CFR 73—World Heritage Convention.

A Tentative List is a national list of natural and cultural properties appearing to meet the World Heritage Committee eligibility criteria for nomination to the World Heritage List. It is a list of candidate sites which a country intends to consider for nomination within a given time period.

The World Heritage Committee has issued *Operational Guidelines* asking participating nations to provide Tentative Lists, which aid in evaluating properties for the World Heritage List on a comparative international basis and help the Committee to schedule its work over the long term. The *Guidelines* recommend that a nation review its Tentative List at least once every decade. The new Tentative List will altogether replace the current U.S. Tentative List (formerly Indicative Inventory) that was published by NPS in the **Federal Register** on May 6, 1982 (FR 47, 88: 19648–19655) and amended with an additional site in 1983 and one other in 1990.

In order to guide the U.S. World Heritage Program effectively and in a timely manner NPS intends to prepare and submit through the Secretary of the Interior and the Secretary of State to the World Heritage Centre of UNESCO by February 1, 2008, a Tentative List of properties that appear to meet the criteria for nomination and can be nominated during the ensuing decade (2009–2019), starting on or before February 1, 2009. The number of sites included on the proposed Tentative List is limited so as to meet the World Heritage Committee's request that the Tentative List allow for the nomination of no more than two sites per year by any one nation (excluding potential emergency nominations not at present foreseen).

Only sites that have been formally found to be of national significance and that have such legal protections as appear necessary to ensure the preservation of the properties and their environment may even be given preliminary consideration for nomination by the United States. By law and regulation, all property owners must also concur in any World Heritage nomination. Only properties for which Applications were submitted and signed by owners or authorized representatives have been considered for inclusion in the new U.S. World Heritage Tentative List.

Inclusion in the Tentative List does not confer World Heritage status or confer any other legal effects on a property, but merely indicates that a property may be further examined for possible World Heritage nomination in the future.

The National Park Service Office of International Affairs (NPS–OIA) and the George Wright Society (GWS) have worked together under a cooperative agreement to prepare the new U.S. Tentative List. The present notice provides an opportunity for property owners and the public to comment on the NPS staff recommendations for the Tentative List and the accompanying explanatory essay. Subsequently, the Secretary of the Interior, through the Assistant Secretary for Fish and Wildlife and Parks, will determine the composition of the new Tentative List and will, as previously noted, submit it through the U.S. Department of State to the World Heritage Committee.

The NPS staff recommendations along with the U.S. National Commission for UNESCO recommendations appear at the end of this Notice. The Tentative List is to consist of properties that appear to quality for World Heritage status and which may be considered for nomination by the United States to the World Heritage List during the next decade. The opportunity for the public to comment is part of a process that has also included the review of the NPS staff recommendations by the U.S. National Commission for UNESCO, a Federal Advisory Commission (FACA) to the U.S. Department of State.

Process for Developing the U.S. World Heritage Tentative List: The NPS–OIA provided an Application form in August 2006 for voluntary applications to a new U.S. World Heritage Tentative List by governmental and private property owners. It was intended that preparers use the Application to demonstrate that their properties meet the criteria established by the World Heritage Committee for inclusion in the World Heritage List (which can be found in the general information on the Tentative List on the NPS–OIA website) and other requirements, including those of U.S. domestic law (16 U.S.C. 470 a–1, a–2, d) and the program regulations (36 CFR 73—World Heritage Convention).

Thirty-seven (37) Applications were received by the April 1, 2007 deadline. Two were subsequently withdrawn. The NPS recommendations were based on staff review of the Applications by the OIA, in consultation with NPS subject matter experts and external reviewers for cultural and natural resources who are knowledgeable about the World Heritage Committee's policies, practices and precedents. Additional correspondence and/or Addenda containing revised or expanded material was received from most applicants in response to written reviews that were provided to them; all of this material has been carefully considered.

Results of Review: Below is a summary of the NPS staff recommendations, which were also provided to the World Heritage Tentative List Subcommittee of the U.S. National Commission for UNESCO for review. The specific NPS staff recommendations are listed at the end of this notice.

The OIA recommends 19 sites for a new Tentative List. These include three natural properties, 15 cultural properties (two of which are extensions to currently inscribed World Heritage Sites), and one mixed natural and cultural property. The staff review recommends four additional sites for future consideration.

NPS specifically requests comments on: (1) The qualifications of the properties listed below as staff recommendations for inclusion in the U.S. World Heritage Tentative List; (2) their assignment to the categories in which they are grouped; (3) how the Tentative List should be added to or revised in the future; (4) how and by whom World Heritage nominations will be prepared; and (5) how to improve public awareness and understanding of the World Heritage program in the United States. In formulating your comments, you may wish to take account of the U.S. National Commission for UNESCO's recommendations referenced just below.

It should be emphasized that the attached list reflects an interim step in the process and is not the final version of the new U.S. World Heritage Tentative List. All public comments that will contribute to the development of the final Tentative List are welcomed and will be summarized and provided to the Department of the Interior officials who will determine the content of the Tentative List.

Comments are also invited on: (1) The practical utility of the information being gathered; (2) the accuracy of the burden

hour estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Review by U.S. National Commission for UNESCO: The staff recommendations for the draft Tentative List were reviewed by a subcommittee of the U.S. National Commission for UNESCO—which included Federal agency representatives drawn from the Federal Interagency Panel on World Heritage—on September 27, 2007. The subcommittee presented its recommendations to the full Commission in a conference call on October 4, 2007, in which the public participated. The recommendations by the National Commission, including those which differ from the NPS staff recommendations, are being displayed on the NPS staff recommended list below and posted on the National Commission's website where they may be consulted at *http://www.state.gov/p/io/unesco.* The members of the National Commission and the World Heritage Draft Tentative List Subcommittee are identified on the same Web site. The contact for the U.S. National Commission for UNESCO is Ken Kolson at 202/663–0289 (*kolsonkl@state.gov*).

Further Actions: The NPS will consider public comments and the National Commission's advice and submit a proposed Tentative List through the Assistant Secretary for Fish and Wildlife and Parks to the U.S. Secretary of the Interior, who will determine the final composition of the Tentative List. The list will be transmitted to the World Heritage Centre by the Department of State by February 1, 2008. This deadline complies with the necessary timeline for preparing the first nominations of sites from the Tentative List in calendar 2008 for submission by February 1, 2009. Such nominations will be prepared in full compliance with the applicable portion of 36 CFR 73.7, the World Heritage Program Regulations.

Draft U.S. World Heritage Tentative List

Summary of Nps Staff Recommendations*

* (Where the U.S. National Commission for UNESCO's Recommendations Differ from those of the NPS Staff Report, they are indicated with the following numbers):

[1] Recommended for Future Consideration by the U.S. National Commission for UNESCO.

[2] Recommended to be placed in ''Other Properties Considered'' by the U.S. National Commission for UNESCO.

Natural Properties Recommended for Inclusion (3)

Petrified Forest National Park, Arizona.

White Sands National Monument, New Mexico.

Okefenokee Swamp National Wildlife Refuge, Georgia.

Mixed Property Recommended for Inclusion (1)

Papahanaumokuakea Marine National Monument, Hawaii.

Cultural Properties Recommended for Inclusion (13)

Poverty Point State Historic Site, Louisiana.

Hopewell Ceremonial Earthworks, Ohio.

Frank Lloyd Wright Buildings, Arizona, California, Illinois, New York, Oklahoma, Pennsylvania and Wisconsin.

Civil Rights Movement Sites, Alabama.

Serpent Mound, Ohio.

San Antonio Franciscan Missions, Texas.

[1] French Creole Properties of the Mid-Mississippi Valley, Illinois and Missouri.

[1] Eastern State Penitentiary, Pennsylvania.

[1] Olana (Home of Frederic Church), New York.

[1] Dayton Aviation Sites, Ohio.

[1] Gamble House, California.

[1] Pipestone National Monument, Minnesota.

[2] Mount Vernon, Virginia.

Recommended Extensions of World Heritage Cultural Sites (2)

Thomas Jefferson Buildings: Poplar Forest and the Virginia State Capitol, Virginia.

[1] Moundville Site, Alabama.

Cultural Properties Recommended for Future Consideration (4)

Moravian Bethlehem, Pennsylvania.

Colonial Newport, Rhode Island.

Shaker Villages, Maine, New Hampshire, New York and Kentucky.

Underground Railroad Sites (John Parker and John Rankin Houses, Ripley, Ohio).

Other Natural Properties Considered (2)

[1] Fagatele Bay National Marine Sanctuary, American Samoa.

[1] Stellwagen Bank National Marine Sanctuary, Massachusetts.

Other Cultural Properties Considered (9)

Blackwater Draw Locality No. 1, New Mexico.

Meadowcroft Rockshelter, Pennsylvania.

SunWatch Village, Ohio.

Historic Center of Savannah, Georgia.

New Harmony, Indiana.

Central of Georgia, Savannah Shed and Terminal Facility, Georgia.

Gilded Age Newport, Rhode Island.

Shenandoah-Dives Mill, Colorado.

Columbia River Highway, Oregon.

Dated: October 25, 2007.

Leonard E. Stowe,

NPS, Information Collection Clearance Officer.

[FR Doc. E7–21377 Filed 10–30–07; 8:45 am]

BILLING CODE 4312–53–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: U.S. Department of Agriculture, Forest Service, Wallowa—Whitman National Forest, Hells Canyon National Recreation Area, Baker City, OR and Thomas Burke Memorial State Museum of Washington, University of Washington, Seattle, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the control of the U.S. Department of Agriculture, Forest Service, Wallowa—Whitman National Forest, Baker City, OR and in the possession of the Thomas Burke Memorial State Museum of Washington (Burke Museum), University of Washington, Seattle, WA. The human remains and associated funerary objects were removed from Idaho County, ID and Wallowa County, OR.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25

U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the Burke Museum and Wallowa—Whitman National Forest professional staff in consultation with representatives of the Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Reservation, Oregon; and Nez Perce Tribe of Idaho.

In 1955—1956, human remains representing a minimum of one individual were removed from 35—WA—13 in Wallowa County, OR, from a cairn burial by George L. Coale, a University of Washington Anthropology student. The human remains were accessioned by the Burke Museum in 1987 (Burke Accn. #1987—12). No known individual was identified. The three associated funerary objects are three stone spalls.

In 1955—1956, human remains representing a minimum of one individual were removed from 35—WA—17 in Wallowa County, OR, from a cairn burial by Mr. Coale. The human remains were accessioned by the Burke Museum in 1987 (Burke Accn. #1987—12). No known individual was identified. The one associated funerary object is a single stone spall.

In 1955, human remains representing a minimum of one individual were removed from 10—ID—12 in Idaho County, ID, by a University of Washington Field Expedition led by Mr. Coale and supervised by Dr. Douglas Osborne. The human remains were transferred to the Burke Museum in 1987 (Burke Accn. #1987—12). No known individual was identified. The 60 associated funerary objects are 42 non-human mammal bones, 15 flakes, 2 pieces of stone shatter, and 1 lot of shell.

In 1955, human remains representing a minimum of two individuals were removed from 10—ID—13 in Idaho County, ID, by a University of Washington Field Expedition led by Mr. Coale and supervised by Dr. Osborne. The human remains were transferred to the Burke Museum in 1987 (Burke Accn. #1987—12). No known individuals were identified. The seven associated funerary objects are one bag of charcoal, two shell fragments, and four unmodified stones.

In 1955, human remains representing a minimum of one individual were removed from 10–ID–25 in Idaho County, ID, by a University of Washington Field Expedition led by Mr. Coale and supervised by Dr. Osborne. The human remains were transferred to the Burke Museum in 1987 (Burke Accn. #1987—12). No known individual was identified. The one associated funerary object is a shell pendant.

The human remains and associated funerary objects are part of the Mt. Sheep Pleasant Valley Reservoir Survey project. All five sites are located on U.S. Forest Service property in the Snake River Canyon. The archeology, ethnography and history of the Snake River Canyon, including those areas from which the human remains were removed, demonstrates a nearly continuous use of the area with numerous adaptations through time that lead inexorably to the occupation and utilization by a people who became identified in historic times as the Nee–Me—Poo or Nez Perce, the Weyiletpuu or Cayuse, Imatalamlama or Umatilla, and Waluulapam or Walla Walla. The oral traditions and oral histories of these groups place their people in the canyon ''since time immemorial.'' Descendants of the Cayuse, Umatilla, and Walla Walla are members of the Confederated Tribes of the Umatilla Reservation, Oregon. Descendants of the Nez Perce are members of the Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Reservation, Oregon; and Nez Perce Tribe of Idaho.

Officials of the Wallowa–Whitman National Forest have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of six individuals of Native American ancestry. Officials of the Wallowa–Whitman National Forest also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 72 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Wallowa–Whitman National Forest also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary object and the Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Reservation, Oregon; and Nez Perce Tribe of Idaho.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Jen Fitzpatrick, Customer Service Staff Officer, Wallowa–Whitman National Forest, 1550 Dewey Avenue, Baker City, OR 97814, telephone (541) 523–1222, before November 30, 2007. Repatriation of the human remains and associated funerary objects to the Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Reservation, Oregon; and/or Nez Perce Tribe of Idaho may proceed after that date if no additional claimants come forward.

Wallowa–Whitman National Forest is responsible for notifying the Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Reservation, Oregon; and Nez Perce Tribe of Idaho that this notice has been published.

Dated: October 1, 2007.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E7–21367 Filed 10–30–07; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: U.S. Department of Agriculture, Forest Service, Wallowa–Whitman National Forest, Hells Canyon National Recreation Area, Baker City, OR; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (5), of the completion of an inventory of human remains in the possession of the Wallowa–Whitman National Forest, Baker City, OR. The human remains were removed from Wallowa County, OR.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the cultural affiliation assigned to the human remains by the addition of two tribes: Confederated Tribes of the Colville Reservation, Washington and Confederated Tribes of the Umatilla Reservation, Oregon.

The Notice of Inventory Completion in the **Federal Register** of June 1, 2005

(FR Doc 05–10821, Page 31523) paragraphs number 5 and 6 are corrected by substituting the following two paragraphs:

Radiocarbon dates from the Knight Creek site (35WA767) range between 2,450 [±120] years B.P and B.P. 1040 ±90 years. Sahaptan/Nez Perce speakers are believed to have occupied the central and eastern areas of the Columbia Plateau, and more specifically the area of Wallowa County, OR, and Snake River area of both Oregon and Idaho, for over 7,000 and possibly 10,000 years or more. Members of the Confederated Tribes of the Colville Reservation, Washington (specifically the Chief Joseph/Wallowa Band); Confederated Tribes of the Umatilla Reservation, Oregon; and Nez Perce Tribe of Idaho include Sahaptan/Nez Perce speakers. The Knight Creek site is located within the ancestral and traditional lands of the Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Reservation, Oregon; and Nez Perce Tribe of Idaho.

Officials of the Wallowa–Whitman National Forest have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Wallowa–Whitman National Forest also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Reservation, Oregon; and Nez Perce Tribe of Idaho.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Jen Fitzpatrick, Customer Service Staff Officer, Wallowa–Whitman National Forest, 1550 Dewey Avenue, Baker City, OR 97814, telephone (541) 523–1222, before November 30, 2007. Repatriation of the human remains to the Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Reservation, Oregon; and/or Nez Perce Tribe of Idaho may proceed after that date if no additional claimants come forward.

Wallowa–Whitman National Forest is responsible for notifying the Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Reservation, Oregon; and Nez Perce Tribe of Idaho that this notice has been published.

Dated: October 1, 2007.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E7–21368 Filed 10–30–07; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: Denver Museum of Nature & Science, Denver, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the Denver Museum of Nature & Science, Denver, CO, which meet the definitions of ''sacred object'' and ''object of cultural patrimony'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

The first cultural item is a Beaver song leader's staff called S'igeidi Shis'aati Woodzakaa (A.C. 497). Such staffs are also generally known as Keet Gooshi (Killer Whale Fin) because of their unique shape, which mimics a fin. The staff is made of carved wood; painted in stylized blocks of red, blue, and black; and decorated with 12 tassels of human hair. The staff features a single figure (a beaver) with a tall head crest. The beaver sits on its haunches with the tail brought through its legs and is turned up in front. The beaver holds an object in its hands, part of which, along with the left arm, has been missing since 1977 according to museum records. The staff is approximately 87 cm in height, 15 cm in width, and 20 cm in length. Representatives of the Central Council of the Tlingit & Haida Indian Tribes provided consultation information that the tassels of human hair that decorate the Beaver song leader's staff are reasonably believed to have been freely given and are not human remains as defined in 43 C.F.R. 10.2 (d)(1).

In 1954, the staff was purchased from the Fred Harvey Company by Francis V. Crane and Mary W. A. Crane. The Cranes then donated the cultural item to the Denver Museum of Nature & Science along with the larger Crane Collection in 1968. It was exhibited in the Denver Museum of Nature & Science's Northwest Coast House until 2002.

The second cultural item is a Beaver headdress called S'igeidi Shakee.at (A. C. 11345). Listed in museum purchase records as being from circa 1890, this headdress consists of a carved wooden frontlet with a beaver and is painted red and green with insets of abalone shell. A panel is attached to a red cloth and the red cloth is decorated with flicker feathers and ermine skins. A strip of white down feathers travels across the back of the headdress. The headdress is approximately 19 cm in length, 14 cm in width, and 6 cm in depth.

In 1973, Mary W. A. Crane purchased the headdress from Douglas C. Ewing of New York, a dealer and collector. In 1976, Mrs. Crane donated the headdress to the Denver Museum of Nature & Science, as part of the larger Crane collection. For a time, the headdress was placed in the Denver Museum of Nature & Science's Northwest Coast Ceremonial Season Exhibit.

During consultation, representatives of the Central Council of the Tlingit & Haida Indian Tribes recounted the social and spiritual importance of both cultural items and the rules of Tlingit cultural property law. Also explained were the ritual uses of the objects and the history of the beaver forming the landscape feature of Basket Bay was recounted. A genealogy was also given demonstrating continuous ownership of the crest from the founding of Angoon up to the present, and that the Deisheetaan Clan has a right to the Beaver crest. One of the caretaker's brothers, Kaakwajee, of Angoon, was photographed holding the staff in 1904. Tlingit tribal members identified Kaakwajee and noted that he belonged to the Deisheetaan Clan, Basket Bay Arch House. It is not known how the staff left the clan's possession.

Museum records document the history of the cultural items from the time they were sold by the dealers to the Cranes. Tlingit of the Basket Bay Arch House of the Deisheetaan Clan of Angoon, AK, are members of the Central Council of the Tlingit & Haida Indian Tribes.

Officials of the Denver Museum of Nature & Science have determined that, pursuant to 25 U.S.C. 3001 (3)(C), the two cultural items are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Denver

Museum of Nature & Science have also determined that, pursuant to 25 U.S.C. 3001 (3)(D), the two cultural items have ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual. Lastly, officials of the Denver Museum of Nature & Science have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between the sacred objects/objects of cultural patrimony and the Central Council of the Tlingit & Haida Indian Tribes.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the sacred objects/objects of cultural patrimony should contact Dr. Chip Colwell–Chanthaphonh, Curator of Anthropology, NAGPRA Officer, Department of Anthropology, Denver Museum of Nature & Science, 2001 Colorado Boulevard, Denver, CO 80205, telephone (303) 370–6378, before November 30, 2007. Repatriation of the sacred objects/objects of cultural patrimony to the Central Council of the Tlingit & Haida Indian Tribes on behalf of the Basket Bay Arch House of the Deisheetaan Clan of Angoon, AK, may proceed after that date if no additional claimants come forward.

The Denver Museum of Nature & Science is responsible for notifying the Central Council of the Tlingit & Haida Indian Tribes that this notice has been published.

Dated: October 3, 2007.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E7–21365 Filed 10–30–07; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item: Denver Museum of Nature & Science, Denver, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate a cultural item in the possession of the Denver Museum of Nature & Science, Denver, CO, which meets the definitions of ''sacred object'' and ''object of cultural patrimony'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

The cultural item is a button blanket which is also called a robe, as the terms are used interchangeably to describe the item, and is named *Lee shakee daax'i x'oow* or the Blanket Above All Others (A.C. 11428). The robe is made of wool, dyed royal blue and crimson, and patterned in the distinctive ''All Tribes'' or ''Tahltan'' style in which the top-third of the blanket consists of three boxes and parallel stripes that run vertically down each side. Each section is bordered with neat rows of white pearl buttons. The robe is 132.5 cm in height and 170.5 cm in width.

In 1973, Laura Hotch, a Chilkat Tlingit from Klukwan, AK, sold the robe to Michael R. Johnson of Seattle, WA, a collector and dealer, who recorded it as being made between A.D. 1890–1900. In 1974, the robe was purchased from Mr. Johnson by Mary W.A. Crane and donated to the Denver Museum of Nature & Science. For a time, the robe was placed in the Denver Museum of Nature & Science's Northwest Coast Ceremonial Season Exhibit, noted in the label text under ''Religious Ceremonies.''

During consultation, representatives of the Central Council of the Tlingit & Haida Indian Tribes recounted the traditional history of the robe and its place in clan belief and ceremonial practice. The robe is traced back three generations to Anna Klaney, the youngest daughter of Xootk' and Sitka Jack. She was the youngest of 13 sisters, each with a robe of the same design. The fate of the other 12 robes is unknown. This robe was given the name *Lee shakee daax'i x'oow* (Blanket Above All Others), and was passed from mother to daughter in the Eagle Nest House. Robes that have been given names such as this one have special importance among the Tlingit and the object is imbued with certain value that a single individual cannot alienate. The robe eventually came to reside with Laura Hotch, who sold the blanket without the consent of the family or clan. Museum records corroborate Tlingit accounts of the robe's sale by Laura Hotch.

The Eagle Nest House has a right to this particular robe. Tlingit of the Eagle Nest House of the Kaagwaantaan Clan of Sitka, AK, are members of the Central Council of the Tlingit & Haida Indian Tribes.

Officials of the Denver Museum of Nature & Science have determined that, pursuant to 25 U.S.C. 3001 (3)(C), the one cultural item is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present–day adherents. Officials of the Denver Museum of Nature & Science have also determined that, pursuant to 25 U.S.C. 3001 (3)(D), the one cultural item has ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual. Lastly, officials of the Denver Museum of Nature & Science have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between the sacred object/object of cultural patrimony and the Central Council of the Tlingit & Haida Indian Tribes.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the sacred object/object of cultural patrimony should contact Dr. Chip Colwell–Chanthaphonh, Curator of Anthropology, NAGPRA Officer, Department of Anthropology, Denver Museum of Nature & Science, 2001 Colorado Boulevard, Denver, CO 80205, telephone (303) 370–6378, before November 30, 2007. Repatriation of the sacred object/object of cultural patrimony to the Central Council of the Tlingit & Haida Indian Tribes on behalf of the Eagle Nest House of the Kaagwaantaan Clan of Sitka, AK, may proceed after that date if no additional claimants come forward.

The Denver Museum of Nature &Science is responsible for notifying the Central Council of the Tlingit & Haida Indian Tribes that this notice has been published.

Dated: October 1, 2007.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E7–21366 Filed 10–30–07; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: Milwaukee Public Museum, Milwaukee, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act

(NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the Milwaukee Public Museum, Milwaukee, WI that meet the definition of ''objects of cultural patrimony'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

The three cultural items are one wooden pipe (MPM 39618/10674), one partial belt of wampum (MPM 30127/7270), and one string of wampum beads (MPM 30128/7270).

In 1922, the partial wampum belt and wampum beads were collected for the museum by Alanson Skinner, the museum curator. Museum records indicate that one of the wampum items was collected from Ms. Harriet Quinney, daughter of Chief John Quinney of the Stockbridge-Munsee tribe. Tribal representatives have indicated that the wampum have ongoing historical, traditional or cultural importance to the tribe and could not have been alienated by a single individual.

In 1932, the pipe was purchased by the museum from Mr. Clarence Sheriff of Green Bay, WI. Museum records state the pipe was formerly the property of Austin Quinney (1791–1865) who was the brother of John Quinney, with whom one of the wampum items is associated. Ethnohistorical records confirm their identification as sachems of the Stockbridge community. Consultation evidence, as well as the iconography and style of the pipe, indicate that the pipe is of ceremonial character, would have been owned by a sachem of the community, and would not have been subject to alienation by an individual.

Officials of the Milwaukee Public Museum have determined that, pursuant to 25 U.S.C. 3001 (3)(D), the three cultural items described above have ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual. Officials of the Milwaukee Public Museum also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the objects of cultural patrimony and the Stockbridge Munsee Community, Wisconsin.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the objects of cultural property should contact Dawn Scher Thomae, Associate Curator of Anthropology, Milwaukee Public Museum, 800 W. Wells Street, Milwaukee, WI 53233, telephone (414) 278–6157, before November 30, 2007. Repatriation of the objects of cultural patrimony to the Stockbridge Munsee Community, Wisconsin may proceed after that date if no additional claimants come forward.

The Milwaukee Public Museum is responsible for notifying the Stockbridge Munsee Community, Wisconsin that this notice has been published.

Dated: September 17, 2007

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E7–21369 Filed 10–30–07; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Oregon State University Department of Anthropology, Corvallis, OR

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the control of Oregon State University Department of Anthropology, Corvallis, OR. The human remains were removed from Adams and Fulton Counties, IL, and unknown sites in Illinois and Indiana.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Oregon State University Department of Anthropology professional staff in consultation with representatives of the Caddo Nation of Oklahoma; Cheyenne River Sioux Tribe of the Cheyenne River Reservation; Flandreau Santee Sioux Tribe of South Dakota; Ho–Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Keweenaw Bay Indian Community, Michigan; Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota; Little Traverse Bay Bands of Odawa Indians, Michigan; Lower Sioux Indian Community in the State of Minnesota; Mashantucket Pequot Tribe of Connecticut; Muscogee (Creek) Nation, Oklahoma; Omaha Tribe of Nebraska; Oneida Nation of New York; Onondaga Nation of New York; Pawnee Nation of Oklahoma; and Red Lake Band of Chippewa Indians, Minnesota.

Between 1930 and 1959, human remains representing a minimum of five individuals were removed from unknown sites in Adams County, IL, by George Karl Neumann, a physical anthropologist working out of Indiana State University, Terre Haute, IN. In 1976, the Oregon State University Department of Anthropology acquired the Neumann Collection from Indiana State University. No known individuals were identified. No associated funerary objects are present.

The human remains are labeled with a numerical identification followed by the letter ''A,'' which is believed to indicate they were removed from a site in Adams County, IL.

Between 1930 and 1959, human remains representing a minimum of one individual were removed from an unknown site in Fulton County, IL, by Dr. Neumann. In 1976, the Oregon State University Department of Anthropology acquired the Neumann Collection from Indiana State University. No known individual was identified. No associated funerary objects are present.

The human remains are labeled with a numerical identification and followed by the letter ''F,'' which is believed to indicate they were removed from Fulton County, IL.

Between 1930 and 1959, human remains representing a minimum of two individuals were removed from unknown sites in Illinois and Indiana, by Dr. Neumann. In 1976, the Oregon State University Department of Anthropology acquired the Neumann Collection from Indiana State University. No known individuals were identified. No associated funerary objects are present.

The two individuals described above are not listed as being from Adams or Fulton county sites, but are described in the acquisition list as ''Lenid type Hopewell'' and ''Hopewell,'' and are accompanied by a distribution map. In absence of detailed records pertaining to the human remains and in combination with the major areas of Dr. Neumann's work, this map provides some geographic reference for the affiliation of the human remains to most likely Illinois or Indiana.

Dr. Neumann collected human remains from several archeological

projects with a focus on Hopewell archeological sites, skeletal characteristics of Native American races, and general human physical variation and skeletal morphology. The culmination of this research is published as ''Archaeology and Race in the American Indian,'' in the 1952 Yearbook of Physical Anthropology Vol. 8. The Neumann Collection contained numerous Native American human remains, many from sites associated with Mound Builder cultures. The human remains are determined to be Native American based on skeletal morphology and collection records.

The Ho–Chunk Nation of Wisconsin and Iowa Tribe of Kansas and Nebraska have provided both written and oral history of their traditional occupation of Midwest areas east of the Mississippi and have demonstrated land area claims in Illinois. The two tribes at one time constituted a single tribe with shared cultural affiliation. The Ho–Chunk Nation of Wisconsin and Iowa Tribe of Kansas and Nebraska traditionally occupied areas that have been demonstrated to include Hopewell sites throughout Illinois. Specific published works cite the Ho–Chunk Nation of Wisconsin and Iowa Tribe of Kansas and Nebraska having villages along the Rock River in Illinois, and between the Iowa and Des Moines Rivers to the confluence of the Salt and Mississippi Rivers. Documentation links early Ioway cultural heritage to the Hopewell culture group, citing Ioway mound builder cultural practices to be consistent with Hopewell religious practices. There is additional information linking the Hopewell culture group to geographic areas including western Missouri and the upper Mississippi River valley, including Effigy Mounds in northeastern Iowa and western Illinois. Based on the preponderance of the evidence, including the primary body of Dr. Neumann's work in Illinois, and collection records, officials of the Oregon State University Department of Anthropology reasonably believe that the human remains are affiliated with the Ho–Chunk Nation of Wisconsin and Iowa Tribe of Kansas and Nebraska.

Officials of the Oregon State University Department of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of eight individuals of Native American ancestry. Officials of the Oregon State University Department of Anthropology also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Ho–Chunk Nation of Wisconsin and Iowa Tribe of Kansas and Nebraska.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact David McMurray, Oregon State University Department of Anthropology, 238 Waldo Hall, Corvallis, OR 97331, telephone (541) 737–4515, before November 30, 2007. Repatriation of the human remains to the Ho–Chunk Nation of Wisconsin and Iowa Tribe of Kansas and Nebraska may proceed after that date if no additional claimants come forward.

Oregon State University Department of Anthropology is responsible for notifying the Absentee–Shawnee Tribe of Indians of Oklahoma; Alabama–Quassarte Tribal Town, Oklahoma; Apache Tribe of Oklahoma; Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Bois Forte Band (Nett Lake) of the Minnesota Chippewa Tribe, Minnesota; Caddo Nation of Oklahoma; Cayuga Nation of New York; Cherokee Nation, Oklahoma; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Cheyenne–Arapaho Tribes of Oklahoma; Chickasaw Nation, Oklahoma; Chitimacha Tribe of Louisiana; Choctaw Nation of Oklahoma; Citizen Potawatomi Nation, Oklahoma; Comanche Nation, Oklahoma; Coushatta Tribe of Louisiana; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Delaware Nation, Oklahoma; Flandreau Santee Sioux Tribe of South Dakota; Fond du Lac Band of the Minnesota Chippewa Tribe, Minnesota; Forest County Potawatomi Community, Wisconsin; Fort Sill Apache Tribe of Oklahoma; Grand Portage Band of the Minnesota Chippewa Tribe, Minnesota; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Huron Potawatomi, Inc., Michigan; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Jena Band of Choctaw Indians, Louisiana; Kaw Nation, Oklahoma; Keweenaw Bay Indian Community, Michigan; Kialegee Tribal Town, Oklahoma; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Kiowa Indian Tribe of Oklahoma; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan; Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Lower Sioux Indian Community in the State of Minnesota; Mashantucket Pequot Tribe of Connecticut; Match–e–be–nash–she–wish Band of Pottawatomi Indians of Michigan; Menominee Indian Tribe of Wisconsin; Miami Tribe of Oklahoma; Mille Lacs Band of the Minnesota Chippewa Tribe, Minnesota; Minnesota Chippewa Tribe, Minnesota; Mississippi Band of Choctaw Indians, Mississippi; Modoc Tribe of Oklahoma; Mohegan Indian Tribe of Connecticut; Muscogee (Creek) Nation, Oklahoma; Narragansett Indian Tribe of Rhode Island; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Omaha Tribe of Nebraska; Oneida Nation of New York; Oneida Tribe of Indians of Wisconsin; Onondaga Nation of New York; Osage Tribe, Oklahoma; Otoe–Missouria Tribe of Indians, Oklahoma; Ottawa Tribe of Oklahoma; Pawnee Nation of Oklahoma; Peoria Tribe of Indians of Oklahoma; Poarch Band of Creek Indians of Alabama; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Ponca Tribe of Indians of Oklahoma; Ponca Tribe of Nebraska; Prairie Band of Potawatomi Nation, Kansas; Prairie Island Indian Community in the State of Minnesota; Quapaw Tribe of Indians, Oklahoma; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Saginaw Chippewa Indian Tribe of Michigan; Santee Sioux Nation, Nebraska; Sault Ste. Marie Tribe of Chippewa Indians of Michigan; Seminole Nation of Oklahoma; Seneca Nation of New York; Seneca–Cayuga Tribe of Oklahoma; Shakopee Mdewakanton Sioux Community of Minnesota; Shawnee Tribe, Oklahoma; Sisseton–Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Sokaogon Chippewa Community, Wisconsin; Spirit Lake Tribe, North Dakota; St. Croix Chippewa Indians of Wisconsin; St. Regis Band of Mohawk Indians of New York; Standing Rock Sioux Tribe of North & South Dakota; Stockbridge Munsee Community, Wisconsin; Thlopthlocco Tribal Town, Oklahoma; Three Affiliated Tribes of the Fort Berthold Reservation, North

Dakota; Tonawanda Band of Seneca Indians of New York; Tonkawa Tribe of Indians of Oklahoma; Tunica–Biloxi Indian Tribe of Louisiana; Turtle Mountain Band of Chippewa Indians of North Dakota; Tuscarora Nation of New York; United Keetoowah Band of Cherokee Indians in Oklahoma; Upper Sioux Community, Minnesota; White Earth Band of Minnesota Chippewa Tribe, Minnesota; Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma; Winnebago Tribe of Nebraska; Wyandotte Nation, Oklahoma; and Yankton Sioux Tribe of South Dakota that this notice has been published.

Dated: September 12, 2007.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E7–21378 Filed 10–30–07; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of The State Museum of Pennsylvania, Harrisburg; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of The State Museum of Pennsylvania, Harrisburg, PA. The human remains and associated funerary objects were removed from Bucks, Chester, Delaware, Lawrence, and Luzerne Counties, PA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the identity of consulting parties and cultural affiliation in a Notice of Inventory Completion previously published in the **Federal Register** on October 26, 2000 (FR Doc 00–27395, pages 64232–64233) by the addition of the Stockbridge Munsee Community, Wisconsin and by the replacement of the Cherokee Nation, Oklahoma for the Delaware Tribe of Indians, Oklahoma due to the latter group's loss of federal recognition and standing as a NAGPRA entity.

In the **Federal Register** of October 26, 2000, paragraph number 3 is corrected by substituting the following paragraph:

A detailed assessment of the human remains was made by The State Museum of Pennsylvania professional staff in consultation with representatives of the Delaware Nation, Oklahoma; Delaware Tribe of Indians (now part of the Cherokee Nation, Oklahoma); and Stockbridge Munsee Community, Wisconsin.

In the **Federal Register** of October 26, 2000, paragraph numbers 14 and 15 are corrected by substituting the following paragraphs:

Officials of The State Museum of Pennsylvania have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains listed above represent the physical remains of 58 individuals of Native American ancestry. Officials of The State Museum of Pennsylvania also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 18,431 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of The State Museum of Pennsylvania have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Cherokee Nation, Oklahoma, on behalf of the Delaware Tribe of Indians; Delaware Nation, Oklahoma; and Stockbridge Munsee Community, Wisconsin.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Janet L. Johnson, Curator, The State Museum of Pennsylvania, 300 North Street, Harrisburg, PA 17120–0024, telephone (717) 705–0869, before November 30, 2007. Repatriation of the human remains and associated funerary objects to the Cherokee Nation, Oklahoma, on behalf of the Delaware Tribe of Indians; Delaware Nation, Oklahoma; and Stockbridge Munsee Community, Wisconsin may proceed after that date if no additional claimants come forward.

The State Museum of Pennsylvania is responsible for notifying Cherokee Nation, Oklahoma, on behalf of the Delaware Tribe of Indians; Delaware Nation, Oklahoma; and Stockbridge Munsee Community, Wisconsin that this notice has been published.

Dated: September 25, 2007.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E7–21364 Filed 10–30–07; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Robert S. Peabody Museum of Archaeology, Phillips Academy, Andover, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Robert S. Peabody Museum of Archaeology, Phillips Academy, Andover, MA. The human remains were removed from Morton County, ND.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the Robert S. Peabody Museum of Archaeology professional staff in consultation with representatives of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Lower Sioux Community of Minnesota; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Prairie Island Indian Community in the State of Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Santee Sioux Nation, Nebraska; Shakopee Mdewakanton Sioux Community of Minnesota; Sisseton–Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Spirit Lake Tribe, North Dakota; Standing Rock Sioux Tribe of North & South Dakota; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota;

Upper Sioux Community, Minnesota; and Yankton Sioux Tribe of South Dakota.

At an unknown time between 1904 and 1908, human remains representing a minimum of one individual were removed from the Fort Lincoln site, Morton County, ND, by Ernst R. Steinbrueck. The Robert S. Peabody Museum of Archaeology purchased Mr. Steinbrueck's Fort Lincoln site collections in 1910. No known individual was identified. No associated funerary objects are present.

The Fort Lincoln site is the historically documented On–A–Slant Village. Based on stylistic characteristics of lithic, ceramic, bone, and shell artifacts (but which are not in the museum's possession), the village was occupied between A.D. 1550 – 1675. Archeological research, historical documentation, and oral history all confirm that the Mandan Tribe lived in the Knife–Heart River region of the Great Plains, where the Fort Lincoln site is located, during the 17th, 18th, and 19th centuries. Oral history indicates that On–A–Slant Village was a Mandan community. Descendents of the Mandan Tribe are members of the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

Officials of the Robert S. Peabody Museum of Archaeology have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Robert S. Peabody Museum of Archaeology also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Malinda S. Blustain, Director, Robert S. Peabody Museum of Archaeology, Phillips Academy, Andover, MA 01810, telephone (978) 749–4490, before November 30, 2007. Repatriation of the human remains to the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota may proceed after that date if no additional claimants come forward.

The Robert S. Peabody Museum of Archaeology is responsible for notifying the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Lower Sioux Community of Minnesota; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Prairie Island Indian Community in the State of Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Santee Sioux Nation, Nebraska; Shakopee Mdewakanton Sioux Community of Minnesota; Sisseton–Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Spirit Lake Tribe, North Dakota; Standing Rock Sioux Tribe of North & South Dakota; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; Upper Sioux Community, Minnesota; and Yankton Sioux Tribe of South Dakota that this notice has been published.

Dated: September 26, 2007.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E7–21374 Filed 10–30–07; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF INTERIOR

National Park Service

Notice of Inventory Completion: Robert S. Peabody Museum of Archaeology, Phillips Academy, Andover, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the control of the Robert S. Peabody Museum of Archaeology, Phillips Academy, Andover, MA. The human remains were removed near Perryville, Washington County, RI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal Agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the Robert S. Peabody Museum of Archaeology professional staff in consultation with representatives of the Narragansett Indian Tribe of Rhode Island.

In 1935, human remains representing a minimum of one individual were removed from the Huntington Farm site in Perryville, Washington County, RI, by Douglas S. Byers under the auspices of the Robert S. Peabody Museum of Archaeology. No known individual was identified. No associated funerary objects are present.

The Huntington Farm site was occupied in the Late Woodland/Contact Period based on lithic objects, preservation of the wood and human remains in the burial, and burial practices. The area around Washington County was in the territory of the Narragansett people at the time of contact with Europeans. Various European settlers document the presence of the Narragansett people in the Narragansett Bay during the 16th and 17th centuries. Descendants of the Narragansett are members of the Narragansett Indian Tribe of Rhode Island. In addition, most of the present-day Narragansett tribal members continue to live in the Washington County area today. Based on burial practices, historic documents and geographic evidence, the officials of the Robert S. Peabody Museum of Archaeology reasonably believe the human remains are culturally affiliated with the Narragansett Indian Tribe of Rhode Island.

Officials of the Robert S. Peabody Museum of Archaeology have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Robert S. Peabody Museum of Archaeology also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Narragansett Indian Tribe of Rhode Island.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Malinda S. Blustain, Director, Robert S. Peabody Museum of Archaeology, Phillips Academy, Andover, MA 01810, telephone (978) 749–4490, before November 30, 2007. Repatriation of the human remains to the Narragansett Indian Tribe of Rhode Island may proceed after that date if no additional claimants come forward.

The Robert S. Peabody Museum of Archaeology is responsible for notifying the Narragansett Indian Tribe of Rhode Island that this notice has been published.

Dated: September 26, 2007.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E7–21376 Filed 10–30–07; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF INTERIOR

National Park Service

Notice of Inventory Completion: Robert S. Peabody Museum of Archaeology, Phillips Academy, Andover, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the control of the Robert S. Peabody Museum of Archaeology, Phillips Academy, Andover, MS. The human remains and associated funerary objects were removed from Alligator Mounds Site, Bolivar County, MS.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal Agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the Robert S. Peabody Museum of Archaeology professional staff in consultation with representatives of the Chickasaw Nation, Oklahoma; Choctaw Nation of Oklahoma; Jena Band of Choctaw Indians, Louisiana; Mississippi Band of Choctaw Indians, Mississippi; and Tunica–Biloxi Indian Tribe of Louisiana.

In 1918, human remains representing a minimum of seven individuals were removed from the Alligator Mounds Site in Alligator, Bolivar County, MS, by Charles Peabody under the auspices of the Robert S. Peabody Museum of Archaeology. No known individuals were identified. The 24 associated funerary objects are 24 fragmentary faunal remains.

The Alligator Mounds Site was occupied in the Hushpucken Phase of the Late Prehistoric Mississippian Phase (A.D. 1350–1550) based on ceramic typologies from the site. The location of Alligator Mounds is southwest of the Tunica village of Quizquiz that the Spanish encountered in A.D. 1541. Tunica oral history also supports the location of the tribe in this area. Both oral tradition and various European documents record the movement of the Tunica from this area to their current location at Marksville, LA. Descendents of the Tunica people are members of the Tunica–Biloxi Indian Tribe of Louisiana. The individuals from the Alligator Mounds Site are culturally affiliated with the Tunica–Biloxi Indian Tribe of Louisiana based on oral tradition, geographical evidence, and historical evidence of population movement.

Officials of the Robert S. Peabody Museum of Archaeology have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of seven individuals of Native American ancestry. Officials of the Robert S. Peabody Museum of Archaeology also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 24 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Robert S. Peabody Museum of Archaeology have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Tunica–Biloxi Indian Tribe of Louisiana.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Malinda S. Blustain, Director, Robert S. Peabody Museum of Archaeology, Phillips Academy, Andover, MA 01810, telephone (978) 749–4490, before November 30, 2007. Repatriation of the human remains and associated funerary objects to the Tunica–Biloxi Indian Tribe of Louisiana may begin after that date if no additional claimants come forward.

The Robert S. Peabody Museum of Archaeology is responsible for notifying the Chickasaw Nation, Oklahoma; Choctaw Nation of Oklahoma; Jena Band of Choctaw Indians, Louisiana; Mississippi Band of Choctaw Indians, Mississippi; and Tunica–Biloxi Indian Tribe of Louisiana that this notice has been published.

Dated: September 26, 2007.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E7–21381 Filed 10–30–07; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Southwest Museum of the American Indian, Autry National Center, Los Angeles, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Southwest Museum of the American Indian, Autry National Center, Los Angeles, CA. The human remains and associated funerary objects were removed from Tularosa Cave, Catron County, NM.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Southwest Museum of the American Indian, Autry National Center professional staff in consultation with representatives of the Hopi Tribe of Arizona; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Clara, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico. The Ohkay Owingeh, New Mexico (formerly the Pueblo of San Juan); Pueblo of Isleta, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; and Pueblo of Zia, New Mexico were invited, but did not participate in the consultation.

In 1905, human remains representing a minimum of one individual were removed from Tularosa Cave in Catron County, NM, by Mr. Peter Goddard Gates (P.G. Gates) as part of the Museum–Gates Expedition, a

collaborative excavation funded by the United States National Museum, now the Smithsonian Institution, and amateur archeologist, Mr. Gates. On an unknown date, Mr. Gates transferred the human remains into the possession of the California Institute of Technology as part of the larger P.G. Gates Collection. In 1946, the California Institute of Technology loaned the P.G. Gates Collection to the Southwest Museum of the American Indian. In 2006, the California Institute of Technology transferred possession of the P.G. Gates Collection to the Southwest Museum of the American Indian. No known individual was identified. The four associated funerary objects are one olivella shell bracelet, two mats made of rush, and one fragment of a woven textile of unknown use.

Archeological evidence of both material culture and geographic settlement patterns indicate that Tularosa Cave is an Upland Mogollon site that was inhabited between 300 A.D. – 1300 A.D. Abandonment of nearly all Mogollon homeland sites before the protohistoric period suggests a possible population migration into neighboring puebloan territory. Traditional history of the Hopi and Zuni identify the occupants of the territory surrounding Tularosa Cave as the Hopi Motisinom and the Zuni A:lashina:we, ancestors to the present-day Hopi Tribe of Arizona and Zuni Tribe of the Zuni Reservation, New Mexico. The members of the Ohkay Owingeh, New Mexico (formerly the Pueblo of San Juan); Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico also share a similar history. A cultural continuum can be reasonably traced between the Upper Mogollon and the Hopi Tribe of Arizona; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Ohkay Owingeh, New Mexico (formerly the Pueblo of San Juan); Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico.

Officials of the Southwest Museum of the American Indian, Autry National Center have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Southwest Museum of the American Indian, Autry National Center also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the four objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Southwest Museum of the American Indian, Autry National Center have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Hopi Tribe of Arizona; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Ohkay Owingeh, New Mexico (formerly the Pueblo of San Juan); Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Dr. Duane H. King, Executive Director, or LaLena Lewark, Senior NAGPRA Coordinator, Southwest Museum of the American Indian, 234 Museum Drive, Los Angeles, CA 90065, (323) 221 – 2164, extension 241, before November 30, 2007. Repatriation of the human remains and associated funerary objects to the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Clara, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico may proceed after that date if no additional claimants come forward.

The Southwest Museum of the American Indian, Autry National Center is responsible for notifying the Hopi Tribe of Arizona; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Ohkay Owingeh, New Mexico (formerly the Pueblo of San Juan); Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: September 7, 2007.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E7–21379 Filed 10–30–07; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: The Wistar Institute, Philadelphia, PA and Pu'uhonua o Honaunau National Historical Park, Honaunau, HI

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the control of The Wistar Institute, Philadelphia, PA and in the physical custody of the Pu'uhonua o Honaunau National Historical Park, Honaunau, HI. The human remains were removed from the Hawaiian Islands.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations

in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by University of Pennsylvania Museum of Archaeology and Anthropology professional staff on behalf of The Wistar Institute in consultation with representatives of the Hawai'i Island Burial Council, Hui Malama I Na Kupuna O Hawai'i Nei, Kauai/Niihau Island Burial Council, Maui/Lanai Island Burial Council, Molokai Island Burial Council, O'ahu Burial Committee, and Office of Hawaiian Affairs. The Wistar Institute retains ownership of these human remains, but has authorized the University of Pennsylvania Museum of Archaeology and Anthropology to handle the NAGPRA process in collaboration with The Wistar Institute and on its behalf.

At an unknown date, but probably around 1905, human remains representing a minimum of one individual were removed from one of the Hawaiian Islands by an unknown person. At an unknown date, the human remains were accessioned into the collections of The Wistar Institute (accession number: 14347). The human remains were transferred to the University of Pennsylvania Museum of Archaeology and Anthropology on a long term loan in 1956 (catalogue number: L–1011–124). On May 12, 2006, at the request of the Hawai'i Island Burial Council and Hui Malama I Na Kupuna O Hawai'i Nei, the human remains were loaned to Pu'uhonua o Honaunau National Historical Park so that the iwi would be on Hawaiian soil pending a determination of its cultural affiliation and completion of the repatriation process. No known individual was identified. No associated funerary objects are present.

The human remains have been identified as Native Hawaiian based on the specific cultural and geographic attribution identified in the museum records. Museum documentation identifies the human remains as those of a male ''Hawaiian'' whose approximate age is 50 years old and also attributes the human remains to ''Sandwich Island.'' Scholarly publications and consultation information indicate the term ''Sandwich Island'' or ''Sandwich Islands'' refers to the Hawaiian Islands. The term was bestowed upon the Hawaiian Islands by Captain James Cook upon his arrival in the Hawaiian archipelago on January 18, 1778. Subsequently, the indigenous people of the Hawaiian Islands were often referred to as ''Sandwich Islanders.'' The term ''Sandwich Island'' fell into disuse in the late 19th century, however, the use of the term supports the identification of this individual as a Native Hawaiian. The morphology of this individual is not inconsistent with its identification as a Native Hawaiian.

Officials of The Wistar Institute and University of Pennsylvania Museum of Archaeology and Anthropology have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one individual of Native Hawaiian ancestry. Officials of The Wistar Institute and University of Pennsylvania Museum of Archaeology and Anthropology have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native Hawaiian human remains and the Hawai'i Island Burial Council, Hui Malama I Na Kupuna 'O Hawaii Nei, Kauai/Niihau Island Burial Council, Maui/Lani Island Burial Council, Molokai Island Burial Council, O'ahu Island Burial Council, and Office of Hawaiian Affairs.

Representatives of any other Native Hawaiian Organization or Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. Gerald Margolis, Interim Director, University of Pennsylvania Museum of Archaeology and Anthropology, 3260 South Street, Philadelphia, PA 19104–6324, telephone (215) 898–4050, before November 30, 2007. Repatriation of the Native Hawaiian human remains to the Hawai'i Island Burial Council, Hui Malama I Na Kupuna O Hawai'i Nei, Kauai/Niihau Island Burial Council, Maui/Lani Island Burial Council, Molokai Island Burial Council, O'ahu Island Burial Council, and the Office of Hawaiian Affairs may proceed after that date if no additional claimants come forward.

The University of Pennsylvania Museum of Archaeology and Anthropology is responsible for notifying the Hawai'i Island Burial Council, Hui Malama I Na Kupuna O Hawai'i Nei, Kauai/Niihau Island Burial Council, Maui/Lani Island Burial Council, Molokai Island Burial Council, O'ahu Island Burial Council, and Office of Hawaiian Affairs that this notice has been published.

Dated: September 10, 2007.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E7–21380 Filed 10–30–07; 8:45 am]

BILLING CODE 4312–50–S

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–404–408 and 731–TA–898–902 and 904–908 (Review)]

Hot-Rolled Steel Products From Argentina, China, India, Indonesia, Kazakhstan, Romania, South Africa, Taiwan, Thailand, and Ukraine

Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the countervailing duty orders on hot-rolled steel products from India, Indonesia, and Thailand and the antidumping duty orders on hot-rolled steel products from China, India, Indonesia, Taiwan, Thailand, and Ukraine would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. The Commission also determines that revocation of the countervailing duty orders on hot-rolled steel products from Argentina and South Africa and the antidumping duty orders on hot-rolled steel products from Argentina, Kazakhstan, Romania, and South Africa would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2]

Background

The Commission instituted these reviews on August 1, 2006 (71 FR 43521) and determined on November 6, 2006 that it would conduct full reviews (71 FR 37366, November 21, 2006). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on January 29, 2007 (72 FR 2556)(as revised, 72 FR 13123, March 20, 2007). The hearing was held in Washington, DC, on July 31 and August 1, 2007, and all persons who requested the opportunity were permitted to appear in person or by counsel.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Commissioner Charlotte R. Lane dissenting with respect to Argentina, Kazakhstan, Romania, and South Africa. Commissioner Dean A. Pinkert dissenting with respect to Kazakhstan, Romania, and South Africa.

The Commission transmitted its determinations in these reviews to the Secretary of Commerce on October 25, 2007. The views of the Commission are contained in USITC Publication 3956 (October 2007), entitled *Hot-Rolled Steel Products from Argentina, China, India, Indonesia, Kazakhstan, Romania, South Africa, Taiwan, Thailand, and Ukraine: Investigation Nos. 701–TA–404–408 and 731–TA–898–902 and 904–908 (Review).*

By order of the Commission.
Issued: October 25, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–21337 Filed 10–30–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1110 (Final)]

Sodium Hexametaphosphate From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of an antidumping investigation.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731–TA–1110 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from China of sodium hexametaphosphate, provided for in subheading 2835.39.50 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

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

FOR FURTHER INFORMATION CONTACT: Debra Baker (202–205–3180), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—The final phase of this investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of sodium hexametaphosphate from China are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on February 8, 2007, by ICL Performance Products, LP (St. Louis, MO) and Innophos, Inc. (Cranbury, NJ).

Participation in the investigation and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. § 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on January 9, 2008, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on January 24, 2008, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before January 15, 2008. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on January 17, 2008, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is January 16, 2008. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is January 31, 2008; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation, including statements of support or opposition to the petition, on or before January 31, 2008. On February 15, 2008, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before February 20, 2008, but such final comments must not contain new factual

information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 Fed. Reg. 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: October 15, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–21396 Filed 10–30–07; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Proposed Settlement Agreement Under the Park System Resource Protection Act

Notice is hereby given that the United States Department of Justice, on behalf of the U.S. Department of the Interior, National Park Service (''DOI'') has reached a settlement with Amery Wirtshafter regarding claims for response costs and damages under the Park System Resource Protection Act (''PSRPA''), 16 U.S.C. 19jj.

The United States' claim arises from the grounding of the vessel ''Diamond Girl'' in Biscayne National Park on April 21, 2000. The grounding damaged the area's seagrass and its habitat. Pursuant to the Agreement, the United States will recover $285,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Settlement Agreement. 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 the Settlement Agreement between the United States and Amery Wirtshafter, DOJ Ref. No. 90–5–1–1–08051.

The proposed Settlement Agreement may be examined at Biscayne National Park, 9700 SW., 328th St., Homestead, FL 33033, and at the Department of the Interior, Office of the Solicitor, Southeast Regional Office, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, Georgia 30303. During the public comment period, the Settlement Agreement may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Settlement Agreement 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 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 $2.75 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Henry S. Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–5418 Filed 10–30–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of a Consent Decree Pursuant to the Clean Water Act

Notice is hereby given that a proposed Consent Decree in *United States of America and the State of Tennessee* v. *Metropolitan Government of Nashville and Davidson County*, Civ. No. 3:07–CV–1056 was lodged on October 24, 2007, with the United States District Court for the Middle District of Tennessee, Nashville Division.

The proposed Consent Decree would resolve certain claims under Sections 301 and 402 of the Clean Water Act, 33 U.S.C. 1251, *et seq.*, against the Metropolitan Government of Nashville and Davidson County (''Metro''), through the performance of injunctive measures, the payment of a civil penalty, and the performance of Supplemental Environmental Projects (''SEPs''). The United States, and the State of Tennessee, which has filed its own complain against Metro (*State of Tennessee* v. *Metropolitan Government of Nashville and Davidson County*, Civ. No. 3:07–CV–1057 (USDA M.D. TN)), allege that Metro is liable as a person who has discharged a pollutant from a point source to navigable water of the United States without a permit and, in some cases, in excess of permit limitations.

The proposed Consent Decree would resolve the liability of Metro for the violations alleged in the complaints filed in these matters. To resolve these claims, Metro would perform the injunctive measures as descried in the proposed Consent Decree; would pay a civil penalty of $564,038 ($282,019 to the United States Treasury and $282,019 to the State of Tennessee which will use the money to fund the Cumberland River Compact); and would perform SEPs valued at $2.8 million, which involves the extension of sewer service to areas currently served only by septic systems. The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment.ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 and should refer to *United States of America and the State of Tennessee* v. *Metropolitan Government of Nashville and Davidson County*, DJ No. 90–5–1–09000.

The proposed Consent Decree may be examined at the Region 4 Office of the Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303 or the United States Attorney's Office for the Middle District of Tennessee, 110 Ninth Avenue South, Suite A61, Nashville, TN 37203. During the public comment

period, the decree may also be examined on the following Department of Justice Web site *http://www.usdoj.gov/enrd/open.html.* A copy of the 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 a-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone information number (202) 514–1547. In requesting a copy from the Consent Decree Library, please refer to *United States of America and the State of Tennessee* v. *Metropolitan Government of Nashville and Davidson County*, (proposed Consent Decree, DOJ Ref. No. 90–5–1–1–09000), and enclose a check in the amount of $68.50 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Henry S. Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–5416 Filed 10–30–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Proposed Consent Decree Under the Park System Resource Protection Act

Notice is hereby given that on September 17, 2007, a proposed consent decree in *United States* v. *Nuthen's Purfect, Inc.,* Civil Action No. 06–cv–22249, was lodged with the United States District Court for the Southern District of Florida.

In this action, filed pursuant to the Park System Resource Protection Act (''PSRPA''), 16 U.S.C. 19jj *et seq.,* the United States sought response costs and damages against Nuthen's Purfect, Inc. (''Nuthen's Purfect'') due to a vessel grounding that occurred in the Everglades National Park on April 18, 2002. The United States Department of Justice, on behalf of the U.S. Department of the Interior, National Park Service (''DOI''), has reached a settlement with Nuthen's Purfect regarding these claims. Pursuant to the Consent Decree, the United States will recover $50,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to the Consent Decree between the United States and Nuthen's Purfect, DOJ Ref. No. 90–5–1–1–08521.

The proposed Consent Decree may be examined at the Everglades National Park, 40001 State Road 9336, Homestead, FL 33034, and at the Department of the Interior, Office of the Solicitor, Southeast Regional Office, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, Georgia 30303. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $3.25 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Henry S. Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–5417 Filed 10–30–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Proposed Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on September 18, 2007, a proposed consent decree in *United States* v. *Theochem Laboratories, Inc. et al.,* Civil Action No. 4:06–cv–00214, was lodged with the United States District Court for the Northern District of Florida.

In this action, filed pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, the United States sought reimbursement of its remaining outstanding incurred response costs relating to the Davis Refining Superfund Site, which is located in Tallahassee, Florida. The United States Department of Justice, on behalf of the United States Environmental Protection Agency, has reached a settlement with Theochem Laboratories, Inc. (''Theochem'') regarding the filed claim. Pursuant to the Consent Decree, the United States will recover $175,000 from Theochem.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to the Consent Decree between the United States and Theochem Laboratories, Inc., DOJ Ref. No. 90–11–3–08056/2.

The proposed Consent Decree may be examined at the United States Attorney's Office, Northern District of Florida, 111 N. Adams Street, 4th Floor, Tallahassee, FL 32301, and at the United States Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, GA 30303. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library please enclose a check in the amount of $5.50 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Henry S. Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–5415 Filed 10–30–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Proposed Termination of Judgment

Notice is hereby given that defendant Hilton Hotels Corp. (''Hilton'') and Starwood Hotels and Resorts Worldwide Inc. (''Starwood''), a successor in interest to both defendant ITT Sheraton Corporation of America (''Sheraton'')

and defendant Western International Hotel Corporation (''Westin''), have filed a motion to terminate the Partial Final Judgment entered in *United States* v. *Greater Portland Convention Association, Inc., et al.,* Civil No. 70–310, 1971 Trade Cas. (CCH) ¶73,731 (D.Or. 1971) on November 29, 1971 (''Partial Final Judgment'') and the Final Judgment entered in *United States* v. *Greater Portland Convention Association, Inc., et al.,* Civil No. 70–310, 1973 Trade Cas. (CCH) ¶74,614 (D.Or. 1973) on September 14, 1973 (''Final Judgment''). Notice is also hereby given that the Antitrust Division of the United States Department of Justice (''the Department''), in a stipulation also filed with the Court, has tentatively consented to termination of the Partial Final Judgment and the Final Judgment, but has reserved the right to withdraw its consent pending receipt of public comments.

On May 12, 1970, the United States filed a complaint alleging the defendants had conspired to restrain trade and commerce in the distribution and sale of hotel supplies. Essentially, the complaint charged the defendants with agreeing (i) to assess an amount of money fixed by the hotels to be paid to GPCA as contributions by hotel suppliers, (ii) to give preference in the purchase of hotel supplies to any hotel supplier who did so contribute, and (iii) to curtail purchases from any hotel supplier who failed or refused to contribute money to the GPCA.

Prior to trial, four of the five defendants; Hilton, GPCA, ITT Sheraton, and Cosmopolitan Investment Inc., settled the charges by accepting entry of the Partial Final Judgment on November 29, 1971. The fifth hotel defendant, Westin, was tried by jury from November 30–December 4, 1970. The jury found that Westin had violated § 1 of the Sherman Act, and Westin appealed this decision to the Ninth Circuit. *United States* v. *Hilton Hotels Corporation., et al.* 467 F.2d 1000 (9th Cir. 1972) *cert. denied,* 93 S.Ct. 938 (1973). On September 26, 1972, the Ninth Circuit affirmed. Westin entered into the Final Judgment on September 14, 1973.

The Department has filed with the Court a memorandum setting forth the reasons why the United States believes that termination of the Partial Final Judgment would serve the public interest. Copies of the motion to terminate, the stipulation containing the United States' tentative consent, the United States' memorandum, and all further papers filed with the Court in connection with the motion to terminate will be available for inspection at the Antitrust Documents Group, Antitrust Division, Room 215, 325 7th Street, NW., Washington, DC 20004, on the Web site *www.usdoj.gov/atr,* and at the Office of the Clerk of the United States District Court for the District of Oregon. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by the Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the Partial Final Judgment and the Final Judgment to the United States. Such comments must be received by the Antitrust Division within sixty (60) days and will be filed with the Court by the United States. Comments should be addressed to John R. Read, Chief, Litigation III Section, Antitrust Division, U.S. Department of Justice, 325 7th Street, NW., Suite 300, Washington, DC 20530, (202) 307–0468.

J. Robert Kramer II,

Director of Operations.

[FR Doc. 07–5390 Filed 10–30–07; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–0223]

National Institute of Justice; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Reinstatement—Crime Mapping Survey.

The Department of Justice (DOJ), Office of Justice Programs (OJP), National Institute of Justice (NIJ) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until December 31, 2007. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Ronald E. Wilson, National Institute of Justice, 810 7th Street, NW., Washington, DC 25301.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the 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.

Overview of This Information Collection:

(1) *Type of Information Collection:* Reinstatement with Change.

(2) *Title of the Form/Collection:* Crime Mapping Survey.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* None. Office of Research and Evaluation, National Institute of Justice, Office of Justice Programs, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Law Enforcement Agencies. Other: None. This national survey is designed to do three things. One is to determine the extent to which police departments, specifically crime analysts, are utilizing computerized crime mapping since the first survey. Two is to understand to what extent crime mapping has been adopted since the first survey. Three is to expand the survey to understand the new ways that computerized crime mapping is being utilized, including the technologies adopted. Surveys will be mailed to a randomly select sample of police departments. The questionnaire will determine the level of crime mapping within those departments, both in terms of hardware and software resources as well as the data used and types of maps that are produced and how they are used. The information collected from this survey will be used to advise the Mapping and Analysis for Public Safety (formerly the Crime Mapping Research

Center) on what resources we need to provide to law enforcement who use, and want to use, crime mapping.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: It is estimated that 112,123 respondents will complete each form within approximately 6 minutes.

(6) An estimate of the total public burden (in hours) associated with the collection: We estimate this survey will take 45 minutes per respondent, with the demographic section taking 10 minutes and the questions regarding crime mapping taking 35 minutes. Based on the expected sample of 2,630 respondents, the total estimated burden is 1,972 hours.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: October 25, 2007.

Lynn Bryant,

Department Clearance Officer, Department of Justice.

[FR Doc. E7–21427 Filed 10–30–07; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

October 26, 2007.

The Department of Labor (DOL) hereby announces the submission of 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.*

Interested parties are encouraged to send comment to the Office of Information and Regulatory Affairs, Attn: John Kraemer, OMB Desk Officer for the Mine Safety and Health Administration (MSHA), Office of Management and Budget, 725 17th Street, NW., Room 10235, Washington, DC 20503, Telephone: 202–395–4816/Fax: 202–395–6974 (these are not toll-free numbers), e-mail: *John_Kraemer@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the applicable OMB Control Number (see below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Mine Safety and Health Administration.

Type of Review: Extension without change of currently approved collection.

Title: Radiation Sampling and Exposure Records.

OMB Control Number: 1219–0003.

Form Number: MSHA Form *4000–9.*

Estimated Number of Respondents: 2.

Estimated Total Annual Burden Hours: 800.

Estimated Total Annual Cost Burden: $0.

Affected Public: Private Sector: Business or other for-profit (Mines).

Description: Title 30 CFR 57.5040 requires mine operators to calculate, record and report individual exposures to concentrations of radon daughters. The calculations are based on the results of the weekly sampling required by 30 CFR 57.5037. Records are maintained by the operator and are submitted to MSHA annually. The sampling and recordkeeping requirement alerts the mine operator and MSHA to possible failure in the radon daughter control system, and permits appropriate corrective action to be taken in a timely manner. Data submitted to MSHA (on MSHA Form 4000–9, Record of Individual Exposure to Radon Daughters) is intended to: (a) Establish a means by which MSHA can assure compliance with underground radiation standards; (b) form a data base of miner exposure for future epidemiological studies; and (c) assure that miners can, upon written request, have records of cumulative exposures made available to them or their estate, and to medical and legal representatives who have obtained written authorization.

Agency: Mine Safety and Health Administration.

Type of Review: Extension without change of currently approved collection.

Title: Training Plan Regulations and Certificate of Training.

OMB Number: 1219–0009.

Form Number: MSHA Form 5000–23.

Estimated Number of Respondents: 3,216.

Estimated Total Annual Burden Hours: 19,186.

Estimated Total Annual Cost Burden: $245,144.

Affected Public: Private Sector: Business or other for-profit (Mines).

Description: Title 30, CFR 48.9 and 48.29 require records of training for underground and surface mines, respectively. Upon completion of each training program, the mine operator certifies on a form approved by the Secretary (MSHA Form 5000–23) that the miner has received the specified training in each subject area of the approved health and safety training plan. Upon approval by the MSHA District Manager, training plans are returned to the mine operator. The approved plans are used to implement training programs for training new miners, training experienced miners, training miners for new tasks, annual refresher training, and hazard training. The plans are also used by MSHA to ensure that all miners are receiving the training necessary to perform their jobs in a safe manner.

In summary, the Form 5000–23 provides the mine operator with a recordkeeping form, the miner with a certificate of training, and MSHA with a monitoring tool for determining compliance requirements. The form in its present format provides the industry with one form that complies with all the requirements of the training regulations.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. E7–21419 Filed 10–30–07; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

October 26, 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.*

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: Katherine Astrich, OMB Desk Officer for the Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–6974 (these are not 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 and Training Administration.

Type of Review: Extension without change of a currently approved collection.

Title: Non-monetary Determination Activity Report.

OMB Control Number: 1205–0150.

Form Number: ETA–207.

Affected Public: State Governments.

Estimated Number of Respondents: 53.

Estimated Total Annual Burden Hours: 896.

Estimated Total Annual Costs Burden: $0.

Description: Claimants for unemployment insurance may be denied their benefits for reasons associated with their separation from employment, such as voluntary quit, or questions of continuing eligibility, such as refusal of suitable work. This data is a byproduct of the normal program operations. The ETA 207 report contains state data on the number and types of issues that arise and on the denials of benefits that may result.

These data are used by the Office of Workforce Security (OWS) to determine workload counts, to enable the OWS to evaluate the adequacy and effectiveness of adjudication determination procedures, and to evaluate the impact of state and Federal legislation with respect to disqualifications. The data are also used for general statistical purposes. No similar data are available from other sources.

Agency: Employment and Training Administration.

Type of Review: Revision of a currently approved collection.

Title: Resource Justification Model (RJM).

OMB Number: 1205–0430.

Form Number: RJM Version 2.4 and ETA Handbook 410.

Affected Public: State Governments.

Estimated Number of Respondents: 53.

Estimated Total Annual Burden Hours: 6,519.

Estimated Total Annual Costs Burden: $0.

Description: The information collected by the RJM program is for budget formulation and grant allocation to the states for the unemployment insurance program.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. E7–21451 Filed 10–30–07; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

October 26, 2007.

The Department of Labor (DOL) hereby announces the submission the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of the 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.*

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: Brian A. Harris-Kojetin, OMB Desk Officer for the Bureau of Labor Statistics (BLS), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–6974 (these are not 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: Bureau of Labor Statistics.

Type of Review: Revision of a previously approved collection.

Title: National Compensation Survey.

OMB Control Number: 1220–0164.

Affected Public: Private Sector: Business or other for-profits and not-for-profits institutions.

Estimated Number of Respondents: 34,929.

Estimated Total Annual Burden Hours: 49,644.

Estimated Total Annual Costs Burden: $0.

Description: Under the National Compensation Survey (NCS), the Bureau of Labor Statistics (BLS) conducts ongoing surveys of compensation (earning and benefits) and job characteristics. The NCS produces data on local, regional and national levels by sampling establishments various localities in all 50 states and the District of Columbia. The NCS samples 152 areas, of which 117 are metropolitan areas. Data from the 48 contiguous States is used to provide data to the President's Pay Agent to meet the BLS obligation under the Federal Employees Pay Comparability Act (FEPCA). NCS data produces the Employment Cost Index (ECI) which is designated as a principal Federal Economic Indicator under OMB Statistical Policy Directive No. 3.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. E7–21456 Filed 10–30–07; 8:45 am]

BILLING CODE 4510–24–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 November 13, 2007.

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 November 13, 2007.

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 23rd day of October 2007.

Ralph DiBattista,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 10/15/07 and 10/19/07]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
62301	AGC Chemicals Americas, Inc. (Comp)	Bayonne, NJ	10/15/07	10/10/07
62302	Aalfs Manufacturing (Wkrs)	Mena, AR	10/15/07	10/07/07
62303	Agilent Technologies, Inc. (Comp)	Liberty Lake, WA	10/15/07	10/12/07
62304	Biomet Bracing (Comp)	Marlow, OK	10/15/07	10/12/07
62305	Kimball Electronics (State)	Hibbing, MN	10/16/07	10/15/07
62306	H C Holding (State)	Wadena, MN	10/16/07	10/15/07
62307	Robert Bosch, LLC (Comp)	Gallatin, TN	10/16/07	10/15/07
62308	Robertshaw Controls/Invensys Controls (Comp)	Long Beach, CA	10/16/07	10/02/07
62309	Kohler Company (UAW)	Kohler, WI	10/16/07	10/12/07
62310	Healthcare Management Partners (Wkrs)	Santa Ana, CA	10/16/07	10/02/07
62311	L R Nelson (State)	Peoria, IL	10/16/07	10/15/07
62312	Ridgeway Furniture (Wkrs)	Ridgeway, VA	10/16/07	10/15/07
62313	Stanley Furniture Company (Comp)	Martinsville, VA	10/16/07	10/15/07
62314	Motorola Inc. (Comp)	Schaumburg, IL	10/17/07	09/27/07
62315	Lottery Commission (Wkrs)	Boise, ID	10/17/07	10/04/07
62316	MECO Corporation (Comp)	Greeneville, TN	10/17/07	10/09/07
62317	Kemira Chemicals (Wkrs)	Washougal, WA	10/17/07	10/16/07
62318	R.L. Stowe Mills Inc. (Comp)	Belmont, NC	10/17/07	10/16/07
62319	E. G. Fashion Inc. (Wkrs)	New York, NY	10/17/07	10/17/07
62320	Precision of Legget & Platt Aluminum Group (State)	Malvern, AR	10/18/07	10/17/07
62321	Dexter Axle (State)	Manchester, IN	10/18/07	10/17/07
62322	Precision Industries (UAW)	Fayetteville, AR	10/18/07	10/17/07
62323	Teradyne, Inc. (Comp)	North Reading, MA	10/18/07	10/17/07
62324	Flynn Enterprises Inc., LLC (Wkrs)	Hopkinsville, KY	10/18/07	10/17/07
62325	Triton Operations d/b/a Webster Hardwoods, LLC (Wkrs)	Bangor, WI	10/18/07	10/17/07
62326	Kasper ALS (State)	Secaucus, NJ	10/19/07	09/19/07
62327	Coshocton Leasing Company LLC (Comp)	Coshocton, OH	10/19/07	10/17/07
62328	Thompson Scientific (State)	Cherry Hill, NJ	10/19/07	09/19/07
62329	Honeywell Sensing and Control (Comp)	Minneapolis, MN	10/19/07	10/17/07
62330	Gerdau Ameristeel (Comp)	Perth Amboy, NJ	10/19/07	10/19/07
62331	Ansonia Copper and Brass, Inc. (Comp)	Ansonia, CT	10/19/07	10/18/07

[FR Doc. E7–21352 Filed 10–30–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,013]

Columbia Lighting: Spokane, WA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 21, 2007 in response to a petition filed by a company official on behalf of workers of Columbia Lighting, Spokane, Washington.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 24th day of October, 2007.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–21350 Filed 10–30–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,353]

Hewlett Packard: Fort Collins, CO; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 24, 2007 in response to a petition filed by a state agency representative on behalf of workers at Hewlett Packard, Fort Collins, Colorado. The workers at the subject facility provide troubleshooting support for Hewlett Packard customers.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 25th day of October 2007.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–21349 Filed 10–30–07; 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 *October 15 through October 19, 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 of 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.

None.

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–62,117; Intasco USA, Port Huron, MI: September 6, 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) 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.

None.

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–62,005; Novacel, Inc., Newton, MA: September 30, 2007.

TA–W–62,025; Seminole Tubular Products—Wheatland Tube Co., John Maneely Company, Houston, TX: August 20, 2006.

TA–W–62,225; Delphi Corporation, East River Lab Facility, Moraine, OH: September 28, 2006.

TA–W–62,228; Waverly Mills, Inc., A Subsidiary of R.J. Kunic and Co., Laurinburg, NC: September 26, 2006.

TA–W–62,249; Fiskars Brands, Inc., Sauk City, WI: October 3, 2006.

TA–W–62,275; Hubbell Power Systems, Inc., Connectors Business Unit, Workforce Personnel, Clanton, AL: October 5, 2006.

TA–W–62,299; GDX Automotive, Inc., North American Division, A Wholly Owned Subsidiary of GDX Automotive North America, Batesville, AR: October 11, 2006.

TA–W–61,860; Laser Die and Engineering, A Subsidiary of Hi-Tec Enterprises, Hi-Tec Employment Services, LLC, Kentwood, MI: July 20, 2006.

TA–W–61,860A; J-Tec Products Co., A Subsidiary of Hi-Tec Enterprises, Hi-Tec Employment Services, LLC, Kentwood, MI: July 20, 2006.

TA–W–62,108; Vermont Plywood, LLC, Hancock, VT: September 4, 2006.

TA–W–62,162; Through The Barn Door Furniture Co., Henderson, NC: September 18, 2006.

TA–W–62,182; Ideal Tool Company, Inc., Tooling Division, On-Site Leased Workers From M-Ploy Temporaries, Meadville, PA: September 18, 2006.

TA–W–62,218; Neilsen Manufacturing, Inc., Salem, OR: November 9, 2007.

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–62,062; IPC Command Systems, A Division of IPC Information Systems, LLC, Mount Laurel, NJ: August 22, 2006.

TA–W–62,209; Lear Corporation, Seating Systems Division, Walker, MI: September 25, 2006.

TA–W–62,224; Porter Engineered Systems Ohio, Including Global Technical Recruiters, Solon, OH: September 28, 2006.

TA–W–62,235; Sanmina-SCI, Enterprise Computing, Remedy, Fountain, CO: September 13, 2007.

TA–W–62,296; Delphi Corporation #1, Powertrain Division, Oak Creek, WI: October 3, 2006.

TA–W–62,192; TMP Directional Marketing, LLC, Graphics Division, Fort Wayne, IN: September 19, 2006.

TA–W–62,203; HDM Furniture Industries, Inc., Plant 43 Morganton Casegoods, Manpower, Friday, etc., Morganton, NC: September 25, 2006.

TA–W–62,208; Tyco Valves and Controls, Manpower, Adecco, Resource Mfg & All Tech, Houston, TX: September 25, 2006.

TA–W–62,236; AB Automotive, Inc., On-Site Leased Workers From Corestaff Services and Manpower Services, Smithfield, NC: September 30, 2006.

TA–W–62,301; AGC Chemicals Americas, Inc., Chemicals Division, Bayonne, NJ: October 10, 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–61,639; Hydro Aluminum North America, Inc., Casting and Extrusion Divisions, Ellenville, NY: May 30, 2007.

TA–W–62,137; Drake Extrusion, Inc., Div. of Chapelthorpe, Ridgeway, VA: September 11, 2006.

TA–W–62,285; Carolina Textile Company, Inc., Dobson, NC: October 1, 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.

None.

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–62,117; Intasco USA, Port Huron, MI.

The Department has determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

None.

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–62,017; Fargo Electronics, A Subsidiary of HID Global, Eden Prairie, MN.

TA–W–62,133; Spectrum Yarns, Inc., Kings Mountain, NC.

TA–W–62,229; Learjet, Inc., A Subsidiary of Bombardier, Inc., Wichita, KS.

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.

None.

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–61,862; OEM/Erie, Inc., Erie, PA.

TA–W–61,902; Gates Corporation, Power Transmission Division, Moncks Corner, SC.

TA–W–61,936; Gruber Systems, Inc., Valencia, CA.

TA–W–62,085; Smurfit Stone Container Corporation, Container Division, Columbia, SC.

TA–W–62,101; American Woodmark, Hardy County Plant, Moorefield, WV.

TA–W–62,115; Rheem Sales Company, Air Conditioning Division, A Subsidiary of Rheem Mfg. Co., Milledgeville, GA.

TA–W–62,119; Cygne Design, Commerce, CA.

TA–W–62,216; Woolrich, Inc, Corporate Headquarters, Woolrich, PA.

TA–W–62,271; Ravenwood Specialty Services, Inc., Ravenswood, WV.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–61,990; CDI Corporation, CDI IT Solutions (IMB NE), Fishkill, NY.

TA–W–62,166; Thompson Scientific, Thompson Scientific IDPO, Cherry Hill, NJ.

TA–W–62,199; Faith Technologies, Appleton, WI.

TA–W–62,252; Gavin Chevrolet Buick Pontiac Inc, Middleville, MI.

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.

TA–W–61,669; Superior Mills, Inc., Marion, VA.

I hereby certify that the aforementioned determinations were issued during the period of *October 15 through October 19, 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: October 25, 2007.

Ralph DiBattista,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E7–21353 Filed 10–30–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,253]

Manpower Incorporated, Spring Lake, MI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 4, 2007 in response to a petition filed by a company official on behalf of workers of Manpower Incorporated, Spring Lake, Michigan.

Workers of the subject firm are covered by a certification of eligibility to apply for worker adjustment assistance and alternative trade adjustment assistance under petition number TA–W–61,530 (amended), that does not expire until August 23, 2009.

Consequently, further investigation in this case would serve no purpose and the investigation under this petition has been terminated.

Signed at Washington, DC, this 22nd day of October 2007.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–21356 Filed 10–30–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,316]

Meco Corporation, Greeneville, TN; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 17, 2007 in response to a petition filed by a company official on behalf of workers at Meco Corporation, Greeneville, Tennessee.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 24th day of October 2007.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–21351 Filed 10–30–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,266]

Mortgage Guaranty Insurance Corporation, Concord, California; Notice of Negative Determination on Remand

On August 9, 2007, the United States Court of International Trade (USCIT) granted the Department of Labor's request for voluntary remand to conduct further investigation in *Former Employees of Mortgage Guaranty Insurance Corporation* v. *United States Secretary of Labor* (Court No. 07–00182).

On April 19, 2007, 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 Mortgage Guaranty Insurance Corporation, Concord, California (the subject firm). (Administrative Record (''AR'') 64). The Department's Notice of negative determination was published in the **Federal Register** on May 9, 2007 (72 FR 26425). (AR 76). The determination stated that, because the workers did not produce an article, and did not support a firm or appropriate subdivision that produced an article domestically, the workers cannot be considered import impacted or affected by a shift of production abroad. (AR 64–65).

Administrative reconsideration was not requested by any of the parties pursuant to 29 CFR 90.18.

The complaint alleges that the subject workers are eligible to apply for worker adjustment assistance due to a shift of production to India followed by increased imports (''our work was sent to Bangalore, India * * * our daily contract underwriting work was retrieved electronically by this team * * * then sent electronically back to * * * the United States'').

In order for the Secretary to issue a certification, petitioners must meet the group eligibility requirements under section 222 of the Trade Act of 1974, as

amended. The applicable requirements can be satisfied in one of two ways:

I. Section (a)(2)(A)—

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; *and*

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)—

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; *and*

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; *or*

2. The country to which the workers' firm has shifted production of the articles is 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.

In order to determine whether the subject workers meet the TAA group eligibility requirements, the Department must first determine whether or not an article was produced at the subject firm, then determine whether the workers are adversely impacted by increased imports of articles like or directly competitive with those produced by the subject firm or by a shift in production abroad of articles like or directly competitive with articles which are produced by the subject firm.

Mortgage Guaranty Insurance Corporation (''MGIC'') is a mortgage guaranty insurance provider. (AR 58, AR 63, Supplemental Administrative Record (''SAR'') 17). A mortgage insurance provider is a company that provides household and business customers with mortgage insurance as protection from credit losses. (AR 52, AR 58).

MGIC uses its affiliate, MGIC Investor Services Corporation (''MISC''), to perform contract underwriting services. (SAR 17). MGIC owns and operates loan processing centers in Concord, California; the Troy/Detroit metropolitan area, Michigan; and Atlanta, Georgia. (AR 57, AR 63, SAR 18, SAR 28, SAR 37). Financial lenders send loan applications to MISC to be reviewed and for MISC to render an opinion as to whether or not the loan applications meet the lenders' requirements. (SAR 17–18, SAR 28, SAR 37, SAR 46). Applications are scanned at a processing center and entered into the main database. (SAR 28, SAR 37, SAR 46). Underwriters located in the various processing centers pull files from a queue of applications to process. (SAR 28, SAR 37, SAR 46). Their duties include entering data, loan indexing, and data validation. (AR 3, AR 44, AR 58, AR 62–63, AR 64, SAR 18, SAR 28, SAR 46).

When a loan application is approved, the underwriter will issue a Notice of Loan Approval (NOLA). (AR 3–5, SAR 17, SAR 28, SAR 37, SAR 46). The NOLA is a letter issued to the applicant that indicates that the application is approved. (AR 3–5, AR 63, SAR 17–18, SAR 28, SAR 37). MGIC states that ''[t]he NOLA is a written document that memorializes MISC's opinion regarding the loan. It is not a tangible product. It is merely a piece of paper indicating that MISC has determined that a specific loan meets the designated underwriting requirements.'' SAR 17. Each NOLA provides a MISC point of contact for customer service purposes. (SAR 18, SAR 28, SAR 37, SAR 46).

In August 2005, MISC entered into an agreement with another U.S. company (hereafter referred to as ''the contractor'') that provided for a team in India to perform contract underwriting services. (AR 50, SAR 18, SAR 29, SAR 37). The contractor's creation of a team in India would take advantage of the time difference between the U.S. and India, thereby enabling the subject firm to meet its customer service processing requirement (forty-eight hours to process a loan application). (SAR 18, SAR 29, SAR 37).

The Plaintiffs allege that the team in India was created for cost reduction purposes (SAR 37) and that Plaintiffs were informed of this new team in September 2005. (SAR 29, SAR 37, SAR 46).

Under a pilot program that began in January 2006, the team in India processed loans for MISC. (SAR 18, SAR 29, SAR 38, SAR 46). The Concord, California center ceased to operate in April 2006 (AR 2, AR 44, SAR 30, SAR 37, SAR 42, SAR 46), and the work performed at that center was shifted to other locations. (AR 51, AR 57, AR 63, AR 64, SAR 18, SAR 30).

In June 2006, the contractor's team in India was fully incorporated into the loan processing operation and began reviewing files from all MISC centers. (SAR 18). MISC then contacted customers (SAR 18) and employees (SAR 19–24) regarding the arrangement with the contractor.

In order to be considered eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, the worker group seeking certification must work for a firm or appropriate subdivision that produces an article and there must be a relationship between the workers' work and the article produced by the workers' firm or appropriate subdivision. Here, the workers' firm reviewed loan applications on behalf of financial lenders to determine whether the applications met the lender's requirements. Approval of a loan application was evidenced by a document called a NOLA. The threshold issue is whether the workers' firm produces an ''article'' for the purpose of certification.

The Department consulted the North American Industry Classification System (''NAICS'') in order to properly characterize the type of company that is at issue. The NAICS Web site states that ''The North American Industry Classification System * * * was developed as the standard for use by Federal statistical agencies in classifying business establishments for the collection, analysis, and publication of statistical data related to the business economy of the U.S.'' *http://www.naics.com/faq.htm#q1.* That reference classifies a mortgage guaranty firm under sector 52—Finance and Insurance, Subsector 534—Insurance Carriers and Related Activities, entry No. 524126—Direct Property and Casualty Insurance Carriers (SAR 57–58). This category is comprised of firms that are ''primarily engaged in initially underwriting (i.e., assuming the risk and assigning premiums) insurance policies that protect policyholders against losses that may occur as a result of property damage or liability'' (SAR 58). Under the NAICS, MGIC, as a mortgage guaranty insurance provider, is a service provider under sector 52 and is not classified as a manufacturing company under sector 31–33, which are industries that produce an article. While such a designation is not controlling on whether an article is produced by the firm, the primary activity of the company is useful in understanding what a firm does for its customers,

which aids in determining whether a firm produces an article, or provides services, for those customers.

MGIC is clearly a service provider which did not produce an article for its customers. MGIC provides loan review services that may incidentally result in a document evidencing the services provided, the NOLA. Issuance of a NOLA by MGIC cannot be considered production of an article under the Act. As noted by the workers themselves, the affected group ''produces'' ''data entry support and the completion of Notice of Loan Approvals ('NOLAS') by validators and underwriters.'' AR 3. No article is produced, merely a portion of a ''loan package'' for the approval or denial of a loan application. The NOLA itself is not a marketable commodity. It has no commercial value to the firm's customers and only memorializes the expertise and analysis of the firm in determining whether a loan should be approved or denied.

MGIC is not in the business of producing an article as a manufacturing firm does and then selling it, nor does it receive revenue from the selling the NOLA. MGIC's revenue flows from the decision and analysis of whether mortgage guaranty insurance should be issued and the revenue from selling that insurance. The NOLA merely memoralizes that decision and the analysis that went into it. Therefore, it is not an article under the Act.

Even if the Department accepts the Plaintiff's allegation that the NOLA is an ''article'', the issuance of a NOLA is merely incidental to the service provided by MGIC. It is not an ''article'' that is covered under the Act. In the Notice of Revised Determination on Remand for Lands' End, A Subsidiary of Sears Roebuck and Company, Business Outfitters CAD Operations, Dodgeville, Wisconsin, TA–W–56,688 (issued March 24, 2006, published at 71 FR 18357), the Department acknowledged that a firm may produce an intangible article, software that is transmitted electronically, that may be covered by the Act. However, the Department emphasized that those workers who provide services are not engaged in the production of an article for the purposes of the Act, even if a written record is generated in the provision of those services. In *Lands' End,* the Department noted:

> The Department stresses that it will continue to implement the longstanding precedent that firms must produce an article to be certified under the Act. This determination is not altered by the fact [that] the provision of a service may result in the incidental creation of an article. For example, accountants provide services for the purposes of the Act even though, in the course of providing those services, they may generate audit reports or similar financial documents that might be articles on the Harmonized Tariff Schedule of the United States.

Such is the case here.

Just like the accounting firm example in *Lands' End*, a tax preparation firm is not selling its customers a tax return; rather, it is selling its expertise in correctly organizing the customer's data into the proper form to meet Internal Revenue Service requirements. Similarly, MGIC is in the business of providing mortgage guaranty insurance for a fee. It receives a loan application from a client (the financial lender) and evaluates the data against a lending requirement established by the client. It then determines, based on the facts in the documentation, whether the loan qualifies for the issuance of insurance. The fact that the services it provides may result in a written document, such as a NOLA, which memorializes its analysis, does not mean that MGIC is in the business of supplying forms or otherwise producing an article. Most businesses, including service firms, generate written records (i.e., records, prescriptions, receipts, bills, timecards, etc.) as part of its operations. Since the Act's requirement that the workers' firm produce an article was intended to limit certification to workers for manufacturers, the Department does not consider the mere existence of these NOLAs as evidence that the firm produces an article and that the workers who generate the documents for the firm fall within the scope of the TAA program.

Applying the Department's methodology of determining the classification of the subject firm and the statutory requirement that the firm produce an article to the facts of the case at hand, the Department determines that the NOLAs and any other incidental documents generated by the subject workers of MGIC do not constitute production of an article for purposes of the Trade Act. Such incidental documents are generated as a result of activities that are incidental to the services provided. Therefore, these workers are not covered under the Act. The fact that a written record is generated does not make the service firm a production firm.

The Department's policy to provide TAA benefits to workers who support a domestic production facility that is import-impacted is supported by current regulation. 29 CFR 90.11(c)(7) requires that the petition includes a ''description of the articles produced by the workers'' firm or appropriate subdivision, the production or sales of which are adversely affected by increased imports, and a description of the imported articles concerned. If available, the petition should also include information concerning the method of manufacture, end uses, and wholesale or retail value of the domestic articles produced and the United States tariff provision under which the imported articles are classified.

The Department operates the program in accordance with current law, including coverage of secondary workers and workers in the oil and gas industry. When the other statutory requirements are met, the Trade Act, as amended, authorizes the Secretary to certify groups of workers at a firm producing an article, as well as workers engaged in services supporting production of an article, including oil and gas production, or the final assembly or finishing of articles that were the basis for a certification of eligibility. Workers at MGIC do not fall within any of these categories. A shift to a foreign country of work unrelated to the production of an article, by a firm that does not produce an article, cannot be a basis for TAA certification. While the Department has discretion to issue regulations and guidance on the operation of a program that it is charged with implementing, the Department cannot expand the program to include workers that Congress did not intend to cover.

This is in accord with the Congressional mandate that requires the production of an article by workers in order for a company to be covered under the Act. In 2002, while amending the Trade Act, the Senate explained the purpose and history of TAA:

> Since it began, TAA for workers has covered mostly manufacturing workers, with a substantial portion of program participants being steel and automobile workers in the mid- to late-1970s to early 1980s, and light industry and apparel workers in the mid- to late-1990s. In fiscal years 1995 through 1999, the estimated number of workers covered by certifications under the two TAA for workers programs averaged 167,000 annually, reaching a high of about 228,000 in 1999, despite a falling overall unemployment rate. During the same period, approximately 784 firms were certified under the TAA for firms program. Participating firms represent a broad array of *industries producing manufactured products*, including auto parts, agricultural equipment, electronics, jewelry, circuit boards, and textiles, as well as some producers of agricultural and forestry products.

S. Rep. 107–134, S. Rep. No. 134, 107th Cong., 2nd Sess. 2002, 2002 WL 221903 (February 4, 2002) (emphasis added). Clearly, the language suggests the focus

of TAA is the manufacture of marketable goods.

Congress has recognized the difference between manufacturers and service firms and that an amendment to the Trade Act is needed to cover workers in service firms. It has recently rejected at least two attempts to amend the Trade Act to expand TAA coverage to service firms. It did not pass either the ''Trade Adjustment Assistance Equity for Service Workers Act of 2005'' or the ''Fair Wage, Competition, and Investment Act of 2005.'' Most recently, Senator Baucus introduced the ''Trade and Globalization Adjustment Assistance Act of 2007,'' which provides for an expansion of coverage to workers in a ''service sector firm'' when there are increased imports of services like or directly competitive with articles produced or services provided in the United States, or a shift in provision of like or directly competitive articles or services to a foreign country.

Thus, the definition of ''article'' continues to distinguish between firms that manufacture articles and those that provide services. Clearly, Congress has specifically allowed TAA eligibility for specific service industries. See, section 222(c)(2)(A), workers in the oil or natural gas drilling or exploration field. Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100–418, § 421(a)(1988). It has not done so here.

While the Plaintiffs assert that the findings of *Former Employees of Electronic Data Systems Corporation* v. *United States Secretary of Labor*, Court No. 03–00373, and *Former Employees of Gale Group, Inc.* v. *United States Secretary of Labor*, Court No. 04–00374, and *Former Employees of Tesco Technologies, LLC* v. *United States Secretary of Labor*, Court No. 05–00264, support their position that the subject workers are eligible to apply for TAA, Department believes that the cases do not support certification here.

In *Former Employees of Electronic Data Systems Corporation* and *Former Employees of Gale Group, Inc.*, the Department certified the workers based on the findings that the workers produced an article, that there were increased imports of articles like or directly competitive with the software code produced by the subject firm, and the increased imports contributed importantly to the workers' separations. In *Former Employees Tesco Technologies, LLC.*, the Department certified the workers based on the findings that there was a shift in production abroad of articles like or directly competitive with articles which are produced by the subject firm followed by increased imports of such articles contributed importantly to the subject workers' separations. Those cases are not relevant because the workers in the case at hand do not produce an article for purposes of the Trade Act.

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 denied eligibility 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 and alternative trade adjustment assistance for workers and former workers of Mortgage Guaranty Insurance Corporation, Concord, California.

Signed at Washington, DC this 23rd day of October 2007.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–21354 Filed 10–30–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,958]

Philip Morris Products International, LLC; McKenney, VA; Notice of Negative Determination Regarding Application for Reconsideration

By application postmarked October 10, 2007, the Bakery, Confectionery, Tobacco Workers and Grain Millers International Union, Local No. 358 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 August 27, 2007 and published in the **Federal Register** on September 11, 2007 (72 FR 51845).

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 petition for the workers of Philip Morris Products International, LLC, McKenney, Virginia engaged in production of partially stemmed tobacco was denied because the ''contributed importantly'' group eligibility requirement of Section 222 of the Trade Act of 1974, as amended, was not met. The ''contributed importantly'' test is generally demonstrated through a survey of the workers' firm's declining customers. The investigation revealed that all partially stemmed tobacco produced by the subject firm was exported to other countries and the subject firm had no domestic customers. The investigation further revealed that there was no shift in production from that firm to a foreign country which is a party to a Free Trade Agreement with the United States or a beneficiary country, nor did the subject firm import partially stemmed tobacco in 2005, 2006 and January through July 2007.

The petitioner stated that even though the workers of the subject firm produced partially stemmed tobacco, Philip Morris also produces cigarettes and workers of the subject firm should be considered as workers supporting production of cigarettes. The petitioner further stated that the parent company of the subject firm closed cigarette production facilities in Cabarras, North Carolina, which would result in increased imports of cigarettes into the United States. The petitioner alleges that because of these imports of cigarettes, the workers of the subject firm who produce partially stemmed tobacco should be certified eligible for TAA.

The Department contacted the company official for further clarification. The company official stated that Philip Morris Products International, LLC, McKenney, Virginia is an Export Processing Facility, which exclusively produces partially stemmed tobacco for export. The company official also confirmed that none of the partial stemmed tobacco from the subject firm was sold to any U.S. facilities in 2005, 2006 or 2007. The company official further stated that the employees of the subject firm did not support production at any domestic facility, including the domestic production facility in Cabarrus, North Carolina. The official further stated that the production from the subject facility is being shifted to Italy, Portugal, Malaysia, Russia, Greece and the Ukraine, countries which are not parties to a free trade agreement with the United States or beneficiary

countries. The subject firm is not increasing imports of partially stemmed tobacco after the shift.

In order to establish import impact, the Department must consider imports that are like or directly competitive with those produced at the subject firm. Imports of cigarettes cannot be considered like or directly competitive with partially stemmed tobacco produced by Philip Morris Products International, LLC, McKenney, Virginia and imports of cigarettes are not relevant in this investigation.

The subject firm reported no imports of partially stemmed tobacco and there are no domestic customers who purchase partially stemmed tobacco from the subject firm and who might have increased imports of partially stemmed tobacco during the relevant time period.

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 25th day of October, 2007.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–21355 Filed 10–30–07; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL COUNCIL ON DISABILITY

Notice of Charter Renewal for the Youth Advisory Committee

AGENCY: National Council on Disability.

ACTION: Notice of renewal.

SUMMARY: This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act of 1972 (Pub. L. 92–463). Following consultation with the U.S. General Services Administration, notice is hereby given that the Chairperson of the National Council on Disability (NCD) is renewing the charter for the Youth Advisory Committee. The purpose of the Youth Advisory Committee is to provide input into NCD activities consistent with the values and goals of the Americans with Disabilities Act.

FOR FURTHER INFORMATION CONTACT: Gerrie Drake Hawkins, Ph.D., Senior Program Analyst, National Council on Disability, 1331 F Street, NW., Suite 850, Washington, DC 20004; 202–272–2004 (voice), 202–272–2074 (TTY), 202–272–2022 (fax), *youth@ncd.gov* (e-mail). The certification of Charter renewal is published below:

Certification

I hereby certify that Charter renewal of the Youth Advisory Committee is in the public interest in connection with the performance of duties imposed on the National Council on Disability.

John R. Vaughn, Chairperson.

Dated: October 23, 2007.

Michael C. Collins,

Executive Director.

[FR Doc. E7–21461 Filed 10–30–07; 8:45 am]

BILLING CODE 6820–MA–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; President's Committee on the Arts and the Humanities: Meeting #62

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the President's Committee on the Arts and the Humanities (PCAH) will be held on November 15, 2007, from 2 p.m. to 5 p.m. (ending time is tentative). The meeting will be held in the Salon IIIB, The Ritz-Carlton , 1150 22nd Street, Washington, DC 20037.

The Committee meeting will begin with welcome, introductions, and announcements. Updates and discussion on recent programs and activities will follow, including a focus on PCAH's international projects. The meeting also will include a review of PCAH ongoing programming for youth arts and humanities learning, preservation and conservation, and special events. Karen Elias, Acting General Counsel, National Endowment for the Arts (NEA), will present the annual ethics briefing for members. The meeting will adjourn after discussion of other business, as necessary, and closing remarks.

The President's Committee on the Arts and the Humanities was created by Executive Order in 1982, which currently states that the ''Committee shall advise, provide recommendations to, and assist the President, the National Endowment for the Arts, the National Endowment for the Humanities, and the Institute of Museum and Library Services on matters relating to the arts and the humanities.''

Any interested persons may attend as observers, on a space available basis, but seating is limited. Therefore, for this meeting, individuals wishing to attend are advised to contact Jenny Schmidt of the President's Committee seven (7) days in advance of the meeting at (202) 682–5560 or write to the Committee at 1100 Pennsylvania Avenue, NW. Suite 526, Washington, DC 20506. Further information with reference to this meeting can also be obtained from Ms. Schmidt.

If you need special accommodations due to a disability, please contact the Office of Accessability, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW. Suite 724, Washington, DC 20506, (202) 682–5532, TDY–TDD (202) 682–5560, at least seven (7) days prior to the meeting.

Dated: October 26, 2007.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. E7–21445 Filed 10–30–07; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting of National Council on the Humanities

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of Meeting.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended) notice is hereby given that the National Council on the Humanities will meet in Washington, DC on November 15–16, 2007.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out his functions, and to review applications for financial support from and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, NW., Washington, DC. A portion of the morning and afternoon sessions on November 15–16, 2007, will not be open to the public pursuant to subsections (c)(4), (c)(6) and (c)(9)(B) of section 552b of Title 5, United States Code because the Council will consider information that may disclose:

Trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and information the premature disclosure of which would be

likely to significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated July 19, 1993.

The agenda for the sessions on November 15, 2007 will be as follows:

Committee Meetings

Open to the Public

Policy Discussion

2–3 p.m.

Challenge Grants/Public Programs—Room 420

Education Programs—Room M–07

Federal/State Partnership—Room 510A

Preservation and Access—Room 415

Research Programs—Room 315.

Closed to the Public

Discussion of specific grant applications and programs before the Council.

3 p.m. until Adjourned

Challenge Grants/Public Programs—Room 420

Education Programs—Room M–07

Federal/State Partnership—Room 510A

Preservation and Access—Room 415

Research Programs—Room 315

The morning session of the meeting on November 16, 2007 will convene at 9 a.m., in the first floor Council Room M–09, and will be open to the public, as set out below. The agenda for the morning session will be as follows:

A. Minutes of the Previous Meeting

B. Reports

1. Introductory Remarks
2. Staff Report
3. Congressional Report
4. Reports on Policy and General Matters

a. Challenge Grants

b. Public Programs

c. Education Programs

d. Federal/State Partnership

e. Preservation and Access

f. Research Programs

The remainder of the proposed meeting will be given to the consideration of specific applications and will be closed to the public for the reasons stated above.

Further information about this meeting can be obtained from Heather Gottry, Acting Advisory Committee Management Officer, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, or by calling (202) 606–8322, TDD (202) 606–8282. Advance notice of any special needs or accommodations is appreciated.

Heather C. Gottry,

Acting Advisory Committee, Management Officer.

[FR Doc. E7–21441 Filed 10–30–07; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by November 30, 2007. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows: 1. *Applicant: Permit Application No.:* 2008–030. Christopher Linder, Woods Hole Oceanographic Institute, 7328 24th Avenue, NE., Seattle, WA 98115.

Activity for Which Permit Is Requested: Enter Antarctic Specially Protected Areas. The applicant plans to enter Cape Crozier (ASPA #124), Backdoor Bay, Cape Royds (ASPA #157), and Cape Royds (ASPA #121) for the purpose of videotaping scientific research with penguins as part of an International Polar Year (IPY) education and outreach project, ''Live from the Poles''. Live from the Poles will help heighten public awareness during IPY by bringing cutting-edge science to diverse, worldwide audiences of students, teachers, and the public.

Location: Cape Crozier (ASPA #124), Backdoor Bay, Cape Royds (ASPA #157), and Cape Royds (ASPA #121).

Dates: November 24, 2007 to January 13, 2008.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. E7–21362 Filed 10–30–07; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–498 and 50–499; License Nos. NPF–76 and NPF–80]

In the Matter of NRG South Texas LP, STP Nuclear Operating Company, (South Texas Project, Units 1 and 2); Order Approving Indirect Transfer of Facility Operating Licenses

I

NRG South Texas LP (NRG South Texas) is a co-holder of the Facility Operating Licenses numbered NPF–76 and NPF–80, which authorize the possession, use, and operation of South Texas Project (STP), Units 1 and 2, respectively. The facilities are located in southwest Matagorda County, Texas, which is approximately 12 miles south-southwest of Bay City and 10 miles north of Matagorda Bay. STP is jointly owned by three entities: NRG South Texas, 44 percent; City of Public Service Board of San Antonio, 40 percent; and City of Austin, Texas, 16 percent. In addition, these entities each hold a corresponding percentage interest in STP Nuclear Operating Company (STPNOC), which operates STP.

II

By application dated May 3, 2007, as supplemented by electronic mail dated June 28, 2007, and letters dated July 23 and October 3, 2007, STPNOC, on behalf of NRG Energy, Inc. (NRG Energy), and NRG South Texas LP, requested that the U.S. Nuclear Regulatory Commission (NRC,

Commission), pursuant to Section 50.80 of Title 10 of the *Code of Federal Regulations* (10 CFR), consent to the proposed indirect transfer of control of the STP licenses to the extent held by NRG South Texas with respect to its ownership interest in STP. Currently, NRG Energy is the indirect owner of 100 percent of NRG South Texas. Under a proposed corporate restructuring, a new holding company, NRG Holdings, Inc., will be created. NRG Energy will become a direct wholly-owned subsidiary of NRG Holdings, Inc. Accordingly, NRG Holdings, Inc. will acquire indirect control of the licenses for STP to the extent currently held by NRG South Texas. In addition, NRG Holdings, Inc. will become an indirect co-owner of STPNOC, with respect to the interest in STPNOC currently held by NRG South Texas. To the extent the proposed corporate restructuring would thus result in the indirect transfer of control of the STP licenses as held by STPNOC, prior NRC consent was also requested.

Notice of the requests for approval and an opportunity for a hearing was published in the **Federal Register** on July 10, 2007 (72 FR 37546). No comments or hearing requests were received.

Pursuant to 10 CFR 50.80(a), no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application as supplemented and other information before the Commission, and relying upon the representations and agreements in the application as supplemented, the NRC staff concludes that the proposed indirect transfer of control of NRG South Texas to NRG Holdings, Inc. as described herein will not affect the qualifications of NRG South Texas as holder of the STP licenses to the extent now held by it, and that the indirect transfer of control of the licenses, to the extent effected by the proposed transaction described in the application, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the NRC pursuant thereto. The NRC staff further concludes that, to the extent the proposed indirect transfer of control of NRG South Texas would result in an indirect transfer of control of the STP licenses as held by STPNOC, such proposed indirect transfer of control of NRG South Texas will not affect the qualifications of STPNOC to hold the STP licenses, and such indirect transfer of control of the licenses as held by STPNOC is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

The findings set forth above are supported by a safety evaluation dated October 22, 2007.

III

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), and 2234; and 10 CFR 50.80, *it is hereby ordered* that the application regarding the indirect license transfers related to the proposed establishment of NRG Holdings, Inc. is approved, subject to the following condition:

Should the indirect transfer of control of NRG South Texas to NRG Holdings, Inc. not be completed within one year from the date of this Order, this Order shall become null and void, provided, however, upon written application and good cause shown, such date may be extended by order.

This Order is effective upon issuance.

For further details with respect to this Order, see the application dated May 3, 2007, and supplemental electronic mail dated June 28, 2007, and letters dated July 23 and October 3, 2007, and the safety evaluation dated October 22, 2007, which are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland and 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/reading-rm/adams.html.*

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, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland this 22nd day of October, 2007.

For the Nuclear Regulatory Commission.

Catherine Haney,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E7–21433 Filed 10–30–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–9027]

Notice of Issuance of Decommissioning Amendment for Cabot Corporation

The U.S. Nuclear Regulatory Commission (NRC) has approved the Cabot Corporation (Cabot) decommissioning plan (DP) for the Reading site by amendment to their Source Material License, SMC–1562.

The Reading site is located in Reading, PA, near the Buttonwood Street bridge. The site operated intermittently between April 1967 and May 1969 for the production of niobium by extraction from tin slag feedstock. The main processing building was removed from the license in August 1995 by license amendment.

The licensee first submitted a DP for the Reading site on August 28, 1998 (Accession No. 9809140068). The submittal was revised in March 2000 to reflect revised dose modeling scenarios and in June 2005 (ML051330369, ML051330364) to incorporate a rip-rap erosion barrier. Revision 3 to the DP was submitted later in June 2005, to reflect changes to the rip-rap design after licensee consultation with the City of Reading Redevelopment Authority (ML053560277).

The licensee submitted revision 4 of the Reading site DP and related documents to the NRC for review and approval in August 2006, (Agencywide Documents Access and Management System (ADAMS) accession numbers ML062360159, ML062360164, and ML062210261) as supplemented on September 21, 2006 (ADAMS accession number ML062640081). This amendment revised the rip-rap cover design and include cover design analysis. An environmental assessment was completed on October 16, 2007 (ML072390296). The NRC approved the DP by Amendment No. 9 to the Source Material License SMC–1562 on October 24, 2007.

A ''Notice of Consideration of Amendment Request for Decommissioning the Cabot Performance Materials, Reading, Pennsylvania, Site, and Opportunity for a Hearing'' was published in the **Federal Register** on October 28, 1998 (63 FR 57715). Two parties requested hearings; Jobert Trucking and the City of Reading Redevelopment Authority. Jobert Trucking was denied standing by the court on May 16, 2000 (ADAMS ML003715331) and the Redevelopment Authority request to withdraw hearing

petition was granted on October 31, 2000 (ML003765068).

Copies of the license amendments approving Cabot's proposed decommissioning plan are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20855–2738. The NRC maintains ADAMS, which provides text and image files of NRC's public documents. The amendment may be accessed electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html* under ADAMS accession number ML072420136. Persons who do not have access to ADAMS, or have problems in accessing the documents located in ADAMS, may contact the NRC PDR Reference staff by phone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 24th day of October, 2007.

For the Nuclear Regulatory Commission

Andrew Persinko,

Branch Chief, Reactor Decommissioning Branch, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. E7–21428 Filed 10–30–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8943]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment for Crow Butte Resources, Inc., Crawford, NE

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: Stephen J. Cohen, Project Manager, Uranium Recovery Licensing Branch, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–7182; fax number: (301) 415–5369; e-mail: *sjc7@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing a license amendment to Material License No. SUA–1534, issued to Crow Butte Resources, Inc. (the licensee), to authorize an upgrade to the central processing plant (CPP) and an increase in the CPP flow rate at its main *in situ* leach (ISL) facility near Crawford, Nebraska. NRC has prepared an Environmental Assessment (EA) in support of this amendment in accordance with the requirements of 10 CFR Part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact is appropriate. The amendment will be issued following the publication of this Notice.

II. EA Summary

The purpose of the proposed amendment is to authorize an upgrade to the CPP and increase the plant flow rate at the licensee's Crawford, Nebraska, facility. Specifically, the licensee is authorized to install a maximum of six ion exchange columns and four ancillary tanks that would support a plant flow rate increase of 4,000 gallons per minute (gpm). The total allowable plant flow rate will increase to 9,000 gpm. On October 17, 2006, the licensee requested that NRC approve the proposed amendment.

The staff has prepared the EA in support of the proposed license amendment. The staff considered impacts to water resources, public and occupational exposures, socio-economic conditions, endangered and threatened fauna and flora, historic and cultural resources, geology, soils, transportation, and air quality. This licensing action involves installing new equipment within the existing footprint of the CPP. Consequently, no building construction or surface disturbance is required to implement this action. Furthermore, the licensee will not open any new wellfields as a result of this licensing action, beyond those currently addressed by its license. The staff, therefore, does not expect the proposed action to impact geology, surface water, endangered and threatened fauna and flora, transportation, and historic and cultural resources.

NRC staff also does not expect significant environmental impacts to groundwater, socio-economic conditions, soil, air quality, and public and occupational exposures. The use of pressurized downflow columns minimizes the releases of radon, thus, no significant impacts to air quality or public and occupational exposures are expected. Also, the licensee maintains procedures for cataloging and addressing system leaks, which minimizes the impacts of such occurrences; therefore, no significant impacts to groundwater and soils are expected. No significant impacts to socio-economic conditions are expected because implementing this action would not result in significant staff increases.

III. Finding of No Significant Impact

On the basis of the EA, NRC has concluded that there are no significant environmental impacts from the proposed amendment and has determined not to prepare an environmental impact statement.

IV. 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 numbers for the documents related to this notice are:

Document title	Date	Accession number
Request for License Amendment for Plant Upgrade	October 17, 2006	ML063390348
License Amendment for Plant Upgrade, Response to Request for Additional Information	April 27, 2007	ML071290026
NRC Inspection Report	September 8, 2006	ML062540084
NRC Environmental Assessment for Renewal of Source Materials License No. SUA–1534	February 1998	ML071520242
Environmental Assessment for the Plant Upgrade	October 23, 2007	ML072360287
NRC Request for Additional Information	September 8, 2006	ML070540341

If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's 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 *24th* day of October, 2007.

For the Nuclear Regulatory Commission.

Stephen J. Cohen,

Project Manager, Uranium Recovery Licensing Branch, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. E7–21429 Filed 10–30–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste And Materials; Meeting on Planning and Procedures; Notice of Meeting

The Advisory Committee on Nuclear Waste and Materials (ACNW&M) will hold a Planning and Procedures meeting on November 13, 2007, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland. The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b (c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACNW&M, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Tuesday, November 13, 2007—8:30 a.m. until 9:30 a.m.

The Committee will discuss proposed ACNW&M activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Officer, Dr. Antonio F. Dias (Telephone: 301/415–6805) between 8:15 a.m. and 5 p.m. (ET) 5 days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACNW&M meetings were published in the **Federal Register** on September 26, 2007 (72 FR 54693).

Further information regarding this meeting can be obtained by contacting the Designated Federal Officer between 8:15 a.m. and 5 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least 2 working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: October 24, 2007.

Antonio F. Dias,

Chief, Nuclear Waste & Materials Branch.

[FR Doc. E7–21430 Filed 10–30–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Subcommittee Meeting on Thermal-Hydraulic Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal-Hydraulic Phenomena will hold a meeting on November 14, 2007, at 11545 Rockville Pike, Rockville, Maryland, Room T–2B1.

The entire meeting will be open to public attendance, with the exception of portions that may be closed to discuss AREVA proprietary information pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Wednesday, November 14, 2007—8:30 a.m. Until 12 Noon

The Subcommittee will review and comment on the proposed AREVA instability detect and suppress solution codes and methodology specified in the topical reports: (1) ANP–10262(P), Revision 0, ''Enhanced Option III Long Term Stability Solution;'' and (2) BAW–10255(P), Revision 2, ''Cycle-specific DIVOM Methodology Using the RAMONA5–FA Code.'' The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, AREVA, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Officer, Ms. Zena Abdullahi (Telephone: 301–415–8716) 5 days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 26, 2007 (72 FR 54695).

Further information regarding this meeting can be obtained by contacting the Designated Federal Officer between 8:45 a.m. and 5:30 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least 2 working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: October 25, 2007.

Cayetano Santos,

Chief, Reactor Safety Branch, ACRS.

[FR Doc. E7–21432 Filed 10–30–07; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56701; File No. SR–CBOE–2007–68]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, Regarding Complex Orders

October 25, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 20, 2007, the Chicago Board Options Exchange, Incorporated (''CBOE'' 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 substantially by the CBOE. On October 19, 2007, the CBOE filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend its rules regarding the handling of certain complex orders. The text of the proposed rule change is available on the Exchange's Web site at (*http://*

[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.

www.cboe.org/Legal), at the CBOE's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE Rule 6.53C, ''Complex Orders on the Hybrid System,'' governs the electronic handling and execution of complex orders by the Exchange's Hybrid System. The purpose of this filing is to allow for the electronic handling and execution of stock-option orders on the Exchange. These are a type of complex order that consist of an option component and a stock component. Stock-option orders are popular with investors (*e.g.*, buy-writes) and are frequently handled on CBOE. To date, these orders are handled manually and the option component is traded in open outcry by a broker. With the establishment of the CBOE Stock Exchange (''CBSX''), an electronic stock trading facility of CBOE, the Exchange is now positioned to handle and trade stock-option orders electronically, with the stock component execution taking place on CBSX.

The Exchange proposes to handle these orders in a manner that is substantially similar to other complex orders handled pursuant to CBOE Rule 6.53C. Electronic stock-option orders will be accepted by the Hybrid System and auctioned in the Complex Order Auction (''COA'') pursuant to CBOE Rule 6.53C(d) when the requirements for an auction are met. An unexecuted stock-option order can also be maintained by the system (either in the Complex Order Book (''COB'') or on the PAR workstation), either of which will monitor the marketability of the order, taking into account the CBSX market for the execution of the stock component of the order.

There are four differences between the handling of stock-option orders and other complex order types handled pursuant to CBOE Rule 6.53C. First, as previously mentioned, the stock portion of the stock-option order will be executed on CBSX. All such executions will be consistent with CBSX trading rules, including priority and matching rules. The execution of the stock-option order cannot take place until the desired price of the stock component is achievable on CBSX. The option leg of the stock-option order will not trade ahead of any resting public customer orders on the Hybrid book. This is consistent with existing CBOE Rule 6.45A(b)(ii), which provides that stock-option orders do not have priority over bids/offers in the public customer limit order book. The option leg may be executed in one-cent increments regardless of the minimum increment applicable to the series.

For example: a customer enters a buy-write order to buy 100 shares of XYZ (trading around $40) and sell a 45 call with a net price of $39.00. There is a public customer order in the Hybrid book to sell the 45 call for $1. When executing the buy-write against auction responses, the system will not allow the option leg of the transaction to trade at $1 or higher (thereby preserving the resting limit order's priority at that price). An execution could occur where the option leg prints at $0.99 and the stock trade prints at $39.99 (in accordance with CBSX priority rules). This meets the buy-write's limit price (involving a total cost of $3900) and does not violate priority on CBOE or CBSX.

Second, the execution of a stock-option order submitted to the COB is slightly different than the priority outlined in CBOE Rule 6.53C(c)(ii). More specifically, a stock-option order submitted to the CBOE will trade in the following sequence: (1) Against other stock-option orders in the COB using public customer priority and then time priority (thus, if there are multiple public customer and broker-dealer stock-option orders resting in COB, the public customer orders will trade first with time priority among them, and then the broker-dealer orders will trade with time priority among them); (2) against individual orders or quotes on the Exchange (*i.e.*, the CBSX book and the options Hybrid book), provided the stock-option order can be executed in full (or in a permissible ratio); and (3) against orders or quotes submitted by Market Participants, as set forth in CBOE Rule 6.53C(c)(ii)(3). Because a portion of a stock-option order is executed on a different platform (CBSX), it is more practical to execute resting stock-option orders against other stock-option orders received by the system first before scanning for executions against the legs on the CBSX book and the options Hybrid book.

The third difference involves the manner in which stock-option orders are executed through the COA. Individual orders and quotes for the various legs of the order will have last priority. Again, this is because it is more practical to execute resting stock-option orders against other stock-option orders received by the system first before scanning for executions against the legs on the CBSX book and the options Hybrid book.

For example: the market for XYZ stock on CBSX is $39.94–39.99. The 45 call market on CBOE is $0.95–1.00. A stock-option order is entered to buy 100 shares and sell the 45 call with a net price of $39.00. The stock-option order is auctioned through the COA, but no responses are received (if responses had been received, priority would have been afforded to public customer responses and any resting public customer stock-option orders that were marketable against the auctioned order using time priority). After the system has determined that there are no responses or resting stock-option orders that can trade against the auctioned stock-option order, it will look to the individual leg markets. In this case, the stock-option order will be filled by the system by executing the stock at $39.99 against the CBSX book and the option at $1 against the CBOE book.

With respect to the last difference, the N-second group timer shall not be in effect for stock-option orders.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Section 6(b)(5) of the Act,[5] in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest. In particular, the Exchange believes that the addition of stock-option orders to the list of complex orders eligible for electronic handling under CBOE Rule 6.53C is a significant enhancement for investors seeking automated handling of stock-option orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

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–CBOE–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–CBOE–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 CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2007–68 and should be submitted on or before November 21, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Nancy M. Morris,

Secretary.

[FR Doc. E7–21383 Filed 10–30–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56703; File No. SR–CHX–2007–22]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change to Amend Rules Relating to the Execution of Odd Lot Market Orders

October 25, 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 October 2, 2007, the Chicago Stock Exchange, Inc. (''CHX'' 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 CHX. 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 provide that market odd lot orders would be executed like round lot orders in the Exchange's Matching System (*i.e.*, executed as if they were subject to Regulation NMS Rule 611[3]). Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in [brackets].[4]

Article 20

Operation of Chx Matching System

* * * * *

Prevention of Trade-throughs

Rule 5.a. An inbound order for at least a round lot is not eligible for execution on the Exchange if its execution would cause an improper trade-through of another ITS market or, when Reg NMS is implemented for a security, if its execution would be improper under Rule 611 (but not including the exception set out in Rule 611(b)(8)) (together an ''improper trade-through''[''']). As described in Interpretation and Policy .03, if the execution of all or part of an inbound order for at least a round lot on the Exchange would cause an improper trade-through, that order (or the portion of that order that would cause a trade-through) shall be routed to another appropriate market or, if designated as ''do not route,'' automatically cancelled; provided, however, that if an undisplayed order is resting in the Matching System and the execution of an inbound round lot order (that is not an IOC or FOK order) against the undisplayed resting order would cause an improper trade-through, the resting order shall be cancelled to the extent necessary to allow the inbound order to be executed or quoted.

b. Inbound odd lot *limit* orders and odd lot crosses shall be eligible for execution on the Exchange even if the execution would trade through another market's bid or offer. *Inbound odd lot market orders shall be executed, for purposes of this Rule, as if they were round lot orders and subject to the requirements of paragraph (a) above.*

* * * * *

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

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 242.611.

[4] The Exchange has consented to the removal of an extra quotation mark from the current text of Article 20, Rule 5(a) of the CHX Rules. *See* E-mail from Ellen Neely, President and General Counsel, CHX to David Michehl, Special Counsel, Division of Market Regulation, Commission on October 23, 2007.

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

Under the Exchange's existing rules, odd lot orders execute in the Matching System without regard to the protected quotations of other markets.[5] The Exchange states that this is because such orders are not subject to the Regulation NMS Order Protection Rule and can trade through better prices in other markets.[6] Through this filing, the Exchange proposes to amend its rules to provide that market odd lot orders would execute like round lot orders (*i.e.*, they would execute as if they were subject to the Regulation NMS Order Protection Rule), while odd lot limit orders and odd lot crosses would continue to execute through better prices on other markets.[7]

The Exchange believes that this proposal will provide appropriate protections to odd lot market orders, while allowing participants to choose to have odd lot limit orders and odd lot crosses executed at other prices.[8]

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange and, in particular, with the requirements of Section 6(b). The proposed rule change is consistent with Section 6(b)(5) of the Act[9] because it would promote just and equitable principles of trade, remove impediments to, and protect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest by allowing market odd lot orders to be executed like round lot orders in the Exchange's Matching 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.

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 the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change; or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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–2007–22 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CHX–2007–22. 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–CHX–2007–22 and should be submitted on or before November 21, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Nancy M. Morris,

Secretary.

[FR Doc. E7–21384 Filed 10–30–07; 8:45 am]

BILLING CODE 8011–01–P

[5] *See* CHX Rules, Article 20, Rule 5(b).

[6] The Exchange states that its handling of the execution of odd lot orders is consistent with the requirements of Regulation NMS. *See* Division of Market Regulation: Responses to Frequently Asked Questions Concerning Rule 611 and Rule 610 of Regulation NMS, FAQ 7.03 (confirming that Rule 611 does not apply to odd lot orders).

[7] The Exchange believes that a participant that submits an odd lot cross seeks to have that order executed at a particular price, without regard to prices in other markets. Similarly, if a participant submits an odd lot limit order, that participant likely only seeks the protection of the order's limit price and does not anticipate that the order would be protected against better prices in other markets.

[8] Odd lot market orders that would trade through the protected quotations of other markets would be rejected from the Exchange's Matching System and either routed to another appropriate market or, if designated as ''do not route,'' automatically cancelled. *See* CHX Rules, Article 20, Rule 5(a).

[9] 15 U.S.C. 78f(b)(5).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56699; File No. SR–ISE–2007–100]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fee Changes

October 24, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 17, 2007, the International Securities Exchange, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange

[1] 5 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the ISE. The ISE has designated this proposal as one establishing or changing a due, fee, or other charge applicable only to a member under Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) 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 ISE proposes to amend its Schedule of Fees to reflect the expiration of fee waivers related to foreign currency options traded on the Exchange. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and at *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 ISE 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 ISE 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 proposed rule change is to amend the ISE Schedule of Fees to reflect the expiration of fee waivers related to foreign currency options traded on the Exchange, referred to in the Schedule of Fees as ''FX options.'' The Exchange adopted certain fee waivers related to FX options on April 17, 2007,[5] which is the day the Exchange began trading in FX options.[6]

In order to promote trading in FX options, for a three month period beginning April 17, 2007, the Exchange waived (1) all transaction fees applicable to members that trade in FX options, (2) the monthly access fee applicable to ISE market makers, and (3) one API for each class of market maker in FX options. These fee waivers expired on October 17, 2007. The Exchange thus proposes to remove language related to these fee waivers from its Schedule of Fees.[7]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[8] in general, and furthers the objectives of Section 6(b)(4),[9] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

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 effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(2) [11] thereunder because it establishes or changes a due, fee, or other charge applicable only to a member. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–ISE–2007–100 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2007–100. 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 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–2007–100 and should be submitted on or before November 21, 2007.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* Securities Exchange Act Release No. 55704 (May 3, 2007), 72 FR 26663 (May 10, 2007).

[6] *See* Securities Exchange Act Release No. 55575 (April 3, 2007), 72 FR 17963 (April 10, 2007) (order approving the listing and trading of Foreign Currency Options).

[7] The Exchange will, however, keep certain exemptions related to foreign currency options fees in place: (1) FXPMMs will continue to be exempt from the Minimum Fee applicable to Primary Market Makers, and (2) FXPMMs and FXCMMs will continue to be exempt from the Inactivity Fee applicable to Primary Market Makers and Competitive Market Makers. *See supra*, Note 5 (citing to Release No. 34–55704).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Nancy M. Morris,

Secretary.

[FR Doc. E7–21386 Filed 10–30–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56700; File No. SR–Phlx–2007–78]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Article FOURTH of its Restated Certificate of Incorporation

October 24, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 5, 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 the Exchange pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(3) thereunder.[4] The Exchange has designated this proposal as one concerned solely with the administration of the Exchange, 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

Phlx proposes to amend its Restated Certificate of Incorporation (''Certificate'') by modifying the definition of ''Related Persons'' in Article FOURTH. The text of the proposed rule change is available at the Exchange, on the Exchange's Web site at *http://www.phlx.com/exchange/phlx_rule_fil.html*, and at the Commission's Public Reference Room.

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(3).

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

As discussed further below, the Exchange represents that the purpose of the proposed rule change is to amend the definition of ''Related Persons'' as it appears in Article FOURTH of the Certificate to remove unnecessary burdens on the flexibility of the Exchange and its shareholders in effecting certain types of lawful fundamental transactions. The Exchange believes that this should facilitate appropriate deliberation, discussion, and activities by the shareholders of the Exchange in relation to fundamental transactions and other appropriate matters, without compromising the policies underlying the concentration limits on voting and ownership of Common Stock of the Exchange contained in Article FOURTH of the Certificate.

Article FOURTH of the Certificate imposes limitations on ownership and voting by holders of Phlx's Common Stock.[5] For purposes of applying these limitations, the holdings of a Phlx shareholder are combined with those of the shareholder's ''Related Persons.'' Clause (b)(iii)(B) of Article FOURTH provides, in pertinent part, that:

* * * ''Related Persons'' shall mean (1) with respect to any Person,[6] all ''affiliates'' and ''associates'' of such Person (as such terms are defined in Rule 12b–2 under the Securities Exchange Act of 1934, as amended (the ''Exchange Act'')), (2) with respect to any natural person constituting a ''member'' (as such term is defined in the Exchange Act) of the Corporation, any broker or dealer with which such member is associated and (3) any two or more Persons that have any agreement, arrangement or understanding (whether or not in writing) to act together for the purpose of acquiring, holding, voting or disposing of shares of Common Stock. (Footnote added).

The Exchange notes that ownership and voting concentration limits are intended to ensure that the Exchange's management is not beset with conflicts of interest for the benefit of a small number of individuals or entities such that the Exchange cannot meet the statutory standards for national securities exchanges set forth in Sections 6[7] and 19[8] of the Act.[9] The Exchange believes that the ''Related Persons'' definition is intended to keep members and other persons from evading the numerical limits of holding shares in multiple affiliates or by having secret agreements with other shareholders whereby their ''true'' level of ownership, control, or voting power indirectly exceeds the permitted percentage limits.

Phlx is of the view that the policy underlying these restrictions was not intended to inhibit the Exchange or shareholders from effecting certain kinds of fundamental, and otherwise lawful, transactions, such as effecting an initial public offering or a merger or from entering into agreements or arrangements that are necessary or directly related to the execution of such transactions.[10]

[5] The concentration limits in the Certificate limit any person, either alone or together with its Related Person, to (i) owning 40% of the outstanding Common Stock of the Exchange (20% in the case of Exchange members), and (ii) exercising voting rights in respect of more than 20% of the Common Stock. A waiver by the Board of Governors, subject to Commission approval, is permitted in certain cases. *See* Article FOURTH (b)(iii) and (v).

[6] In Article FOURTH (a)(iv), ''Person'' is defined as an individual, partnership (general or limited), joint-stock company, corporation, limited liability company, trust or unincorporated organization, and a government or agency or political subdivision thereof.

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78s.

[9] *See* Securities Exchange Act Release No. 50699 (November 18, 2004), 69 FR 71126 (December 8, 2004) (proposed SRO governance rulemaking). The organizational documents of other national securities exchanges contain similar concentration limits. *See* Securities Exchange Act Release Nos. 45803 (April 23, 2002), 67 FR 21306 (April 30, 2002) (SR–ISE–2002–01) (approving the restructuring of International Securities Exchange, Inc. from a limited liability company to a corporation); and 49718 (May 17, 2004), 69 FR 29611 (May 24, 2004) (SR–PCX–2004–08) (approving the demutualization of the former Pacific Exchange, Inc.). *See also* Securities Exchange Act Release Nos. 49067 (January 13, 2004), 64 FR 2761 (January 21, 2004) (SR–BSE–2003–19) (approving the operating agreement of the Boston Options Exchange); and 54399 (September 1, 2006), 71 FR 53728 (September 12, 2006) (SR–ISE–2006–45) (granting accelerated approval of the establishment of ISE Stock Exchange, LLC as a facility of the International Securities Exchange, Inc.).

[10] Indeed, such fundamental transactions have been consummated, and are currently contemplated, by other national securities exchanges. In these cases, charter provisions of

Continued

Moreover, Phlx does not believe that the concentration limits or the ''Related Persons'' definition were intended to have the effect of limiting discussions among shareholders of any sort as they relate to the business of the Exchange or other matters of concern to the shareholders. In order to structure a fundamental transaction in a manner that is mutually beneficial to all parties, management and shareholders need the freedom to discuss various aspects of the transaction without the threat of these initial discussions triggering sub-clause (3) of the ''Related Person'' definition, thereby potentially causing the shareholders who are party to such discussions to exceed their permitted ownership and/or voting limits.

The proposed amendment is intended to (i) provide that certain ordinary agreements, arrangements or understandings in connection with potential fundamental transactions of the type described above are expressly permitted, and (ii) negate any inference that discussions or other communications among shareholders affecting the interests of the shareholders or the Exchange, as they relate to such transactions or certain other matters (that are not otherwise exempted under the definition), would cause shareholders to be regarded as ''Related Persons.''

a. Exempted Matters

The proposed amendment would exclude from the scope of the ''Related Persons'' definition any agreement, arrangement, or understanding pertaining to any of the following: A merger, sale, acquisition, or other corporate affiliation of or by the Exchange or any subsidiary; the sale of all or substantially all of the assets of the Exchange; the issuance, offer, or sale by the Exchange and/or one or more shareholders (whether in one or more public or private transactions) of Common Stock of the Exchange.

The purpose of this language is to provide that certain types of ordinary and customary agreements and arrangements in connection with potential fundamental transactions, such as those described above, do not cause such shareholders to be ''Related Persons.'' These would include, for example, underwriting agreements relating to an initial public offering, merger agreements, asset purchase agreements, lock-up and standstill agreements, and voting agreements in connection with an acquisition.

The Exchange believes that if these types of agreements cannot be entered into without causing existing shareholders to be regarded as ''Related Persons'' (and thereby causing the aggregation of their shareholdings to prohibited levels), then Phlx will be severely hampered in its ability to proceed to structure and negotiate an otherwise lawful, fundamental transaction of the type described above. However, the proposal is intended to narrowly define certain types of transactions about which agreements, arrangements, and understandings may be concluded without causing the shareholders that are party thereto to be regarded as ''Related Persons.'' The Phlx believes that the legitimate policy concerns that are safeguarded by the current voting and ownership limitations in the Exchange's Certificate continue to be addressed, because Article FOURTH would still treat as ''Related Persons,'' persons who are parties to agreements that are formed for any reason that is outside of the defined list of exempted transactions and certain related preparatory agreements (see discussion below).[11]

b. Certain Preparatory Activities

The proposal will also exempt from the ''Related Persons'' definition certain agreements, arrangements, or understandings that relate to preparations for effecting fundamental transactions, including the preparation, filing with the Commission, or dissemination of a registration, proxy, or information statement in respect of any of the matters or transactions described in the Exempted Matters section above and any proposal or plan to do any of the foregoing, and any step that is required for, or specifically and directly related thereto.

The above language is intended to cover activities relating to the preparations, plans, and/or steps required for, or specifically and directly related to, the types of fundamental transactions described above. This clause expands the scope of activities that are proposed to be permitted without triggering the ''Related Persons'' definition. However, the proposal clearly defines the scope of activities that can be engaged in and cannot serve as a subterfuge for members or affiliates or other shareholders to join together to use their ownership or voting rights to attempt to manage the day-to-day operations of the Exchange to their benefit and disadvantage of others or to deny access to the facilities of the Exchange.

c. Discussions of Other Communications

This proposed amendment is also intended to clarify that certain communications among shareholders affecting the interests of the shareholders or the Exchange (other than those relating to transactions or activities that are otherwise exempted under the proposal) will not be presumed to constitute an ''agreement, arrangement, or understanding . . . to act together for the purpose of acquiring, holding, voting or disposing of shares of Common Stock.'' The Exchange believes that Article FOURTH, as currently drafted, could result in an inappropriate chilling effect on legitimate discussions or other communications that do not implicate any of the Commission's concerns underlying the concentration limits and the ''Related Persons'' definition, as discussed above.

The proposal provides that the following shall not create a presumption or inference that persons have an agreement, arrangement, or understanding for the purposes of determining ''Related Persons,'' as defined by Article FOURTH: (i) Communications by or among any persons (or their officers, agents or representatives) for the purpose of understanding, considering, or communicating the advisability, desirability, or feasibility of any matter concerning the interests of the Exchange or its shareholders, or (ii) the fact that two or more persons (or their officers, agents or representatives) may have expressed or communicated common views as to the advisability, desirability or feasibility of any matter concerning the interests of the Exchange or its shareholders (including, in either such case, by way of voting or otherwise acting as Governors,[12] members of

such exchanges similar to those in Article FOURTH of the Certificate were deleted or amended to accommodate specific transactions, such as when the Pacific Exchange was acquired by Archipelago Holdings. *See* Securities Exchange Act Release 50170 (August 9, 2004), 69 FR 50419 (August 16, 2004) (SR–PCX–2004–56); *see also* International Securities Exchange Holdings, Inc. Form 8–K, Item 5.02 (Accession Number 1193125–7–96585 (April 30, 2007)).

[11] Of course, if a fundamental transaction were to proceed, the concentration limits and related procedures set forth in Article FOURTH would apply to any shareholder or prospective shareholder of the Exchange, unless the Certificate is further amended or the Exchange is not the surviving entity in the case of a merger. In these latter cases, any proposed amendment or any proposed new or successor Certificate would need to be filed with the Commission. *See* Sections 3(a)(27) (defining ''rules of an exchange'' to include the certificate of incorporation or ''instruments corresponding to the foregoing'') and 19(b) (specifying procedures pertaining to filing and approval of self-regulatory organizations' rules and proposed rule changes) of the Act, 15 U.S.C. 78c(a)(27) and 78s(b)(1). Thus, the protections afforded by the concentration limits would not be diluted in the case of a fundamental transaction.

[12] *See* Phlx By-Law Article I, Section 1–1(m).

standing or other committees or shareholders).

By listing non-exclusive examples of permitted discussions and other communications, the Exchange hopes to clarify that certain customary and appropriate conversations and other communications between and among shareholders will not cause the shareholders to be considered ''Related Persons'' and result in the aggregation of their shares or voting rights in a way that would improperly restrict legitimate communication among shareholders.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [13] in general, and furthers the objectives of Sections 6(b)(5) of the Act [14] 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 modifying Phlx's Certificate to remove unnecessary burdens on the flexibility of the Exchange and its shareholders in effecting certain types of lawful fundamental transactions. The Exchange also believes that its proposal is consistent with Section 6(b)(1) of the Act [15] in that it should facilitate appropriate deliberation, discussion, and activities by the shareholders of the Exchange in relation to fundamental transactions and other appropriate matters, without compromising the policies underlying the concentration limits on voting and ownership of Common Stock of the Exchange contained in Article FOURTH of the Certificate.

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.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78f(b)(1).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change is concerned solely with the administration of the Exchange, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act and Rule 19b–4(f)(3) thereunder. At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2007–78 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2007–78. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of 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–Phlx–2007–78 and should be submitted on or before November 21, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Nancy M. Morris,

Secretary.

[FR Doc. E7–21382 Filed 10–30–07; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11079 and # 11080]

California Disaster # CA–00074

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of California (FEMA–1731–DR), dated 10/24/2007.

Incident: Wildfires.

Incident Period: 10/21/2007 and continuing.

DATES: *Effective Date:* 10/24/2007.

Physical Loan Application Deadline Date: 12/24/2007.

Economic Injury (EIDL) Loan Application Deadline Date: 07/24/2008.

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 President's major disaster declaration on 10/24/2007, 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 (Physical Damage and Economic Injury Loans):

Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara, Ventura.

Contiguous Counties (Economic Injury Loans Only):

California: Imperial, Inyo, Kern, San Luis Obispo.

Arizona: La paz, Mohave.

Nevada: Clark.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.875
Homeowners without Credit Available Elsewhere	2.937
Businesses with Credit Available Elsewhere	8.000
Other (Including Non-Profit Organizations) with Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 110795 and for economic injury is 110800.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E7–21412 Filed 10–30–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11004 and # 11005]

Minnesota Disaster Number MN–00011

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 4.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Minnesota (FEMA–1717–DR), dated 08/23/2007.

Incident: Severe Storms and Flooding.

Incident Period: 08/18/2007 through 08/31/2007.

DATES: *Effective Date:* 10/22/2007.

Physical Loan Application Deadline Date: 11/14/2007.

EIDL Loan Application Deadline Date: 05/23/2008.

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 Minnesota, dated 08/23/2007 is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 11/14/2007.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E7–21414 Filed 10–30–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11021 and #11022]

New York Disaster Number NY–00053

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 New York (FEMA–1724–DR), dated 08/31/2007.

Incident: Severe Storms, Flooding and Tornado

Incident Period: 08/08/2007.

Dates: Effective Date: 10/22/2007.

Physical Loan Application Deadline Date: 11/16/2007.

EIDL Loan Application Deadline Date: 06/02/2008.

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 New York, dated 08/31/2007 is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 11/16/2007.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E7–21408 Filed 10–30–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Advisory Board; Public Meeting

Pursuant to the Federal Advisory Committee Act, Appendix 2 of Title 5, United States Code, Public Law 92–463, notice is hereby given that the U.S. Small Business Administration (SBA), National Small Business Development Centers Advisory Board will be hosting a public meeting via conference call on Tuesday, November 20, 2007 at 1 p.m. Eastern Standard Time.

The purpose of the meeting is to discuss and finalize the recorded minutes from the State Director's Town Hall Meeting that was held at the Association of Small Business Development Centers (ASBDC) Annual Conference in Denver, Colorado on September 16–20, 2007.

Anyone wishing to make an oral presentation to the Board must contact Alanna Falcone, Program Analyst, U.S. Small Business Administration, Office of Small Business Development Centers, 409 3rd Street, SW., Washington, DC 20416, telephone (202) 619–1612 or fax (202) 481–0134.

Matthew Teague,

Committee Management Officer.

[FR Doc. E7–21409 Filed 10–30–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards: Waiver of the Nonmanufacturer Rule

AGENCY: U.S. Small Business Administration.

ACTION: Notice of intent to Waive the Nonmanufacturer Rule for Irradiation Apparatus Manufacturing.

SUMMARY: The U.S. Small Business Administration (SBA) is considering granting a request for a waiver of the Nonmanufacturer Rule for Irradiation Apparatus Manufacturing. According to the request, no small business manufacturers supply these classes of products to the Federal government. If granted, the waiver would allow otherwise qualified regular dealers to supply the products of any domestic manufacturer on a Federal contract set

aside for small businesses; service-disabled veteran-owned small businesses or SBA's 8(a) Business Development Program.

DATES: Comments and source information must be submitted November 15, 2007.

ADDRESSES: You may submit comments and source information to Pamela M. Fenderson, Program Analyst, U.S. Small Business Administration, Office of Government Contracting, 409 3rd Street, SW., Suite 8800, Washington, DC 20416.

FOR FURTHER INFORMATI0N CONTACT: Pamela M. Fenderson, Program Analyst, by telephone at (202) 205–7408; by Fax at (202) 481–4783; or by e-mail at *Pamela.Fenderson@sba.gov.*

SUPPLEMENTARY INFORMATION: Section 8(a)(17) of the Small Business Act (Act), 15 U.S.C. 637(a)(17), requires that recipients of Federal contracts set aside for small businesses, service-disabled veteran-owned small businesses, or SBA's 8(a) Business Development Program provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.406(b). Section 8(a)(17)(b)(iv) of the Act authorizes SBA to waive the Nonmanufacturer Rule for any ''class of products'' for which there are no small business manufacturers or processors available to participate in the Federal market.

As implemented in SBA's regulations at 13 CFR 121.1202(c), in order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. The SBA defines ''class of products'' based on a six digit coding system. The coding system is the Office of Management and Budget North American Industry Classification System (NAICS).

The SBA is currently processing a request to waive the Nonmanufacturer Rule for Irradiation Apparatus Manufacturing North American Industry Classification System (NAICS) code 334517 product number (6525).

The public is invited to comment or provide source information to SBA on the proposed waivers of the Nonmanufacturer Rule for this class of NAICS code within 15 days after date of publication in the **Federal Register**.

Arthur E. Collins, Jr.,

Director for Government Contracting.

[FR Doc. E7–21407 Filed 10–30–07; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2007–41]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: This notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before November 20, 2007.

ADDRESSES: You may send comments identified by Docket Number FAA–2007–27018 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Docket:* To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for 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).

FOR FURTHER INFORMATION CONTACT: Tyneka Thomas (202) 267–7626 or Frances Shaver (202) 267–9681, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2007–27018.

Petitioner: NJI, Inc.

Section of 14 CFR Affected: 14 CFR 135.225(f)

Description of Relief Sought: To allow NJI to make instrument flight rules takeoffs from foreign and military airports when the visibility is less than 1 statute-mile or make an instrument approach when the visibility is less than ½ mile.

[FR Doc. E7–21426 Filed 10–30–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Early Scoping Notice for an Alternatives Analysis of Proposed Transit Improvements in the Regional Connector Transit Corridor of Los Angeles, CA

AGENCY: Federal Transit Administration, DOT.

ACTION: Early Scoping Notice.

SUMMARY: The Federal Transit Administration (FTA) and the Los Angeles County Metropolitan Transportation Authority (LACMTA) issue this early scoping notice to advise other agencies and the public that they intend to explore, in the context of the Council on Environmental Quality's early scoping process, alternative means of improving transit capacity and service in and through the central core of Los Angeles, California. The early scoping process is part of a planning

Alternatives Analysis (AA) required by 49 United States Code (U.S.C.) 5309 that will lead to the selection of the alternatives that will be subject to the appropriate environmental process. Early scoping meetings have been planned and are announced below.

The proposed Regional Connector would provide a link connecting several light rail service lines in operation or in construction (i.e., the Metro Gold Line to Pasadena, the Metro Gold Line Eastside Extension, the Metro Blue Line, and the Metro Expo Line). This connection would broaden and improve the region's public transit, mobility, and accessibility. The project study area within which various alternatives will be considered for the Regional Connector is situated in downtown Los Angeles, generally encompassing the area between the 101 Freeway on the north, 9th Street/Los Angeles Street and 7th Street on south, the 110 Freeway on the west, and Alameda Street on the east.

After selection of the alternatives by the LACMTA Board, the alternatives will then be the subject of the appropriate environmental review under the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA). If the alternatives have significant impacts, an environmental impact statement (EIS), combined with a California environmental impact report (EIR) would be initiated with a Notice of Intent (NOI) in the **Federal Register** and distribution of a Notice of Preparation (NOP) required under CEQA and final public and agency scoping of the EIS/EIR. In particular, the purpose and need for the project, the range of alternatives to be considered in the EIS/EIR, the environmental and community impacts to be evaluated, and the methodologies to be used, would be subject to public and interagency review and comment, in accordance with 23 U.S.C. 139 and CEQA.

DATES: Written comments on the scope of the planning Alternatives Analysis, including the alternatives to be considered and the impacts to be assessed, should be sent to LACMTA at the address below by November 21, 2007. See **ADDRESSES** below for the address to which written public comments may be sent. Early scoping meetings to accept public comments on the scope of the Alternatives Analysis will be held on the following dates:

- Tuesday, November 6, 2007, from 11:30 p.m. to 1:30 p.m. Central Library, Meeting Room A, 630 W. 5th St., Los Angeles, CA 90071.
- Wednesday, November 7, 2007, from 6 p.m. to 8 p.m. Japanese American National Museum, 369 East First Street, Los Angeles, CA 90012.

The draft purpose and need for the project and the initial set of alternatives proposed for study will be presented at these meetings. The buildings and facilities used for the scoping meetings are accessible to persons with disabilities. Any individual who requires special assistance, such as a sign language interpreter, to participate in a scoping meeting should contact Ms. Susan Gilmore, LACMTA at 213–922–7287 or *Gilmores@metro.net*.

Scoping materials will be available at the meetings and are also available on the LACMTA Web site at *http://www.metro.net.* Hard copies of the scoping materials are available from Ms. Susan Gilmore, LACMTA at 213–922–7287 or *Gilmores@metro.net.*

An interagency scoping meeting will be held on Tuesday, October 30, 2007, from 12:30 to 2:30 p.m. at LACMTA, One Gateway Plaza, 3rd Floor, Board Overflow Room, Los Angeles, CA 90012. Representatives of Native American tribal governments and of all Federal, State, and local agencies that may have an interest in any aspect of the project will be invited by phone letter, or e-mail.

It should be noted that, in addition to the early scoping meetings described herein, the agency and scoping meetings required under NEPA and CEQA to identify the nature and scope of environmental issues that should be addressed in the EIS/EIR will be held following issuance of the NOI and NOP. The dates and locations for the EIR/EIS scoping meetings will be announced at that time and will be included in the NOI and NOP, which will be distributed in the same manner as this Early Scoping Notice.

ADDRESSES: Written comments on this Early Scoping Notice should be sent to Ms. Dolores Roybal Saltarelli, AICP, Project Manager, Los Angeles County Metropolitan Transportation Authority, One Gateway Plaza, Los Angeles, CA 90012, phone 213–922–3024, e-mail *roybald@metro.net*. The locations of the early scoping meetings are given above under **DATES**.

FOR FURTHER INFORMATION CONTACT: Mr. Ray Tellis, Team Leader, Los Angeles Metropolitan Office, Federal Transit Administration, 888 South Figueroa Street, Suite 1850, Los Angeles, CA 90017, phone 213–202–3950, e-mail *ray.tellis@dot.gov.*

SUPPLEMENTARY INFORMATION:

Early Scoping

The FTA and LACMTA invite all interested individuals and organizations, public agencies, and Native American tribes to comment on the scope of alternatives formulation, including the purpose and need for transit improvements in the corridor, the alternatives to be considered, and the types of impacts to be further evaluated in the planning Alternatives Analysis. Comments at this time should focus on the purpose and need for transit improvements in the corridor; alternatives that may be less costly or have less environmental impacts while achieving similar transportation objectives; and the identification of any significant social, economic, or environmental issues that should be considered in defining a range of alternatives.

Purpose and Need for the Project

The purpose of this project is to improve the region's public transit service and mobility. The project would provide a link connecting the light rail service of the Metro Gold Line to Pasadena, the Metro Gold Line Eastside Extension, the Metro Blue Line and the Metro Expo Line. This link will serve communities across the region, allowing greater accessibility while serving a resurgent downtown Los Angeles. There is a need for transportation improvements within this study area. Originally planned as a northern extension of the Metro Blue Line to Pasadena, the project was deferred due to limited resources. Initial studies were developed and completed in 1994 and are available from LACMTA at One Gateway Plaza, Records Management, Los Angeles, CA 90012. At that time, only the Metro Blue Line and a short segment of the Metro Red Line Subway were in construction or in operation in downtown Los Angeles. By 2007, the Metro rail system had grown substantially, with lines in operation or under construction extending over 60 miles from downtown Los Angeles. The Metro Red Line from 7th Street Metro Center to Union Station currently serves as an interim connection between the Metro Gold Line and Metro Blue Line. With continued expansion and success of the Metro fixed guide-way system, considerations supporting the project's needs are as follows:

- Metro's increased ridership due to an expanding system will create capacity issues on the Metro Red Line Segment between the Metro Gold Line and the Metro Blue Line.
- Improved travel times through the downtown core will attract more riders on the transit system throughout the region.

• The City of Los Angeles has developed a ''Centers Concept'' Land Use Policy which is transit based.

• There is existing, significant, dense, private and public developments within the study area that are regional activity centers and destinations including City Hall, Disney Hall, Caltrans Headquarters, MOCA, Federal Courts, County Courts, etc..

• Downtown Los Angeles is in the midst of a resurgence that includes the development of dense residential developments in the form of mid-high rise buildings, new entertainment districts including LA Live and the Grand Avenue Plan, and conversion of older underutilized areas into new commercial and residential uses, all in construction within the study area.

• Local planning guidelines and policies are supportive of sustainable public transportation that provides for a walkable, livable City of Los Angeles.

• The City of Los Angeles will experience a significant overall increase in population and job growth over the next 20 years.

• Increased congestion through downtown Los Angeles on the highway network has created support for improved high-capacity transit alternatives.

• Continued expansion of the transit system is creating a demand for increased capacity.

• Improved connectivity of a transit system has significant positive impacts on ridership.

• Improved connectivity of the transit system will improve operations.

Comments on the preliminary purpose and need statements for the proposed project are requested from the public and participating agencies. Comments will be given full consideration.

Alternatives

A broad range of alternatives are being considered in the AA process, including various transit technologies, corridor alignments, configurations and operations, station types and locations, and Transportation Systems Management (TSM) improvements. In addition to these various types of actions, the implications of taking no action (i.e., the ''no build'' alternative) will be considered in the analysis. The following summarizes the general types of alternatives to be considered in the analysis, understanding that a broad variety of possible alternatives, and combinations thereof, will be initially identified and then undergo evaluation to define the alternatives for advancement to the environmental process. Further description of this process is provided below under FTA Procedures.

Alternative Technologies could include proven transportation systems based such as light rail, bus rapid transit, people movers, or monorail.

Alignment Alternatives include fixed guide-way, street running at-grade systems, aerial and underground configurations, center or side of street operations, and at-grade, off street alignments. Running north to south, alignments could include the use of some combination of Alameda Street, Los Angeles St., Central Avenue, San Pedro St., Main St., Spring St., Broadway, Hill St., Olive St., Grand Avenue, Hope St., Flower St., Figueroa St. Running east to west, alignments could include some combination of Aliso St., Temple St., 1st St., 2nd St., 3rd St., 4th St., 5th St., 6th St., and 7th St. Station Alternatives include variations in the number, interval distance, location, design including whether above ground or below ground and whether stand-alone or integrated as part of another use, and operational characteristics.

No Build Alternative includes only ''committed'' improvements—in the current Metro Long Range Transportation Plan and the 2030 Southern California Association of Governments Regional Transportation Plan—together with minor transit service expansions and/or adjustments that reflect a continuation of existing service policies. For purposes of the Alternatives Analysis, the major fixed guideway investments under study for the Exposition Transit Corridor Phase 2 and Crenshaw Transit Corridor projects would not be included in the Future No-Build Alternative. The completion of the Metro Rapid Bus Program would be included as well as possible additional feeder bus networks to serve the region's major activity centers.

Transportation System Management (TSM) Alternative enhances the No Build Alternative and emphasizes transportation system upgrades such as intersection improvements, minor road widening, traffic engineering actions, bus route restructuring, shortened bus headways, expanded use of articulated buses, reserved bus lanes, contra-flow lanes for buses and High Occupancy Vehicles (HOVs) on freeways, special bus ramps on freeways, expanded park/ride facilities, express and limited-stop service, signalization improvements, and timed-transfer operations.

In addition to the alternatives described above, other alternatives identified through the early scoping process will be considered for potential inclusion in the Alternatives Analysis. Alternative modes, vertical or horizontal alignments, or station locations may emerge from the early scoping process.

FTA Procedures

Early scoping is an optional element of the National Environmental Policy Act (NEPA) process that is particularly useful in situations where, as here, a proposed action (the locally preferred alternative) has not been identified and alternative modes and major alignment variations are under consideration in a broadly-defined corridor. While NEPA scoping normally follows issuance of a notice of intent, which describes the proposed action, it ''may be initiated earlier, as long as there is appropriate public notice and enough information available on the proposal so that the public and relevant agencies can participate effectively.'' See the Council on Environmental Quality's ''Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations,'' 46 FR 18026, 18030 (1981). In this case, the available information is more than adequate to permit the public and relevant agencies to participate effectively in early scoping and the planning Alternatives Analysis.

LACMTA may seek New Starts funding for the proposed project under 49 U.S.C. § 5309 and will, therefore, be subject to New Starts regulation (49 Code of Federal Regulations [CFR] part 611). The New Starts regulation requires a planning Alternatives Analysis that leads to the selection of a Locally Preferred Alternative by LACMTA and the inclusion of the locally preferred alternative in the long-range transportation plan adopted by the Southern California Association of Governments. The planning Alternatives Analysis will examine alignments, technologies, station locations, costs, funding, ridership, economic development, land use, engineering feasibility, and environmental factors in the corridor. The New Starts regulation also requires the submission of certain project-justification information in support of a request to initiate preliminary engineering, and this information is normally developed during the Alternatives Analysis. After a reduction of alternatives identified in the AA process, if preparation of an environmental impact statement is warranted, an NOI will be published in the **Federal Register** and the scoping of the EIS/EIR will be completed by soliciting and considering comments on the purpose and need for the proposed action, the range of alternatives to be considered in the EIS/EIR, and the

potentially significant environmental and community impacts to be evaluated in the EIS/EIR. Concurrent with publication of the NOI pursuant to NEPA, an NOP will be distributed pursuant to CEQA. In conjunction with this final scoping of the EIS/EIR and consistent with provisions of 23 U.S.C. 139 and CEQA, invitations will be extended to other Federal and non-Federal agencies that may have an interest in this matter to be participating agencies.

A plan for coordinating public and agency participation in the environmental review process and for commenting on the issues under consideration at various milestones of the process will be prepared and posted on the LACMTA Web site at *http://www.metro.net/regionalconnector.*

Issued on: October 25, 2007.

Leslie T. Rogers,

Regional Administrator, Region IX, Federal Transit Administration.

[FR Doc. E7–21424 Filed 10–30–07; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Early Scoping Notice for an Alternatives Analysis of Proposed Transit Improvements in the Eastside Extension Phase II Transit Corridor of Los Angeles, CA

AGENCY: Federal Transit Administration, DOT.

ACTION: Early Scoping Notice.

SUMMARY: The Federal Transit Administration (FTA) and the Los Angeles County Metropolitan Transportation Authority (LACMTA) issue this early scoping notice to advise other agencies and the public that they intend to explore, in the context of the Council on Environmental Quality's early scoping process, alternative means of improving transit capacity and service in the Eastside Extension Phase II Transit Corridor of Los Angeles, California. The early scoping process is part of a planning Alternatives Analysis (AA) required by Title 49 United States Code (U.S.C.) § 5309, that will lead to the selection of the proposed action and alternatives that will be subject to the appropriate environmental process. Early scoping meetings have been planned and are announced below.

The Eastside Extensive Phase II Transit Corridor is east-west oriented and includes all or portions of the cities of Montebello, Pico Rivera, Monterey Park, Industry, Downey, Whittier, Commerce, Rosemead, South El Monte, South San Gabriel, Sante Fe Springs, Bell as well as unincorporated portions of the County of Los Angeles. The study area generally extends from Union Station in downtown Los Angeles, north to the Interstate 10 freeway, east to approximately three miles east of the State Route 605, and south to Interstate 5 freeway. The Alternatives Analysis will study the extension of high capacity transit service from the Metro Gold Line Eastside Extension to approximately 3 miles east of the State Route 605.

The conclusion of the planning Alternatives Analysis is expected to be the selection of a Locally Preferred Alternative (LPA) by the LACMTA and the Southern California Association of Governments, which is the official metropolitan planning organization for Los Angeles. The LPA will then be the ''proposed action'' that is subject to an appropriate environmental review under the National Environmental Policy Act (NEPA). If the selected LPA would have significant impacts, an environmental impact statement (EIS), combined with a California environmental impact report (EIR) would be initiated with a Notice of Intent in the Federal Register and distribution of a Notice of Preparation (NOP) required under the California Environmental Quality Act (CEQA). Public and agency scoping of the EIS/EIR would be conducted at that time. In particular, the purpose and need for the project, the range of alternatives to be considered in the EIS/EIR, the environmental and community impacts to be evaluated, and the methodologies to be used, would be subject to public and interagency review and comment, in accordance with 23 U.S.C. 139 and CEQA.

DATES: Written comments on the scope of the planning Alternatives Analysis, including the alternatives to be considered, should be sent to LACMTA at the address below by November 30, 2007. See **ADDRESS** below for the address to which written public comments may be sent. Early scoping meetings to accept public comments on the scope of the planning Alternatives Analysis will be held on the following dates:

- Thursday, November 8, 2007, from 6:30 p.m. to 8:30 p.m. Palm Park, 5703 Palm Avenue, Whittier, CA 90601.
- Saturday, November 10, 2007, from 9 a.m. to 12 p.m. Senior Center at City Park, 115 South Taylor Avenue, Montebello, CA 90640.
- Wednesday, November 14, 2007, from 6:30 p.m. to 8:30 p.m. Potrero Heights Elementary School, 8026 East Hill Drive, Rosemead, CA 91770.
- Thursday, November 15, 2007, from 6:30 p.m. to 8:30 p.m. North Park Middle School/Cafeteria, 4450 Durfee Avenue, Pico Rivera, CA 90660.

The draft purpose and need for the project and the initial set of alternatives proposed for study will be presented at these meetings. The buildings and facilities used for the scoping meetings are accessible to persons with disabilities. Any individual who requires special assistance, such as a sign language interpreter, to participate in a scoping meeting should contact Mr. David Monks, LACMTA at 213 922–7456 or *Monksd@metro.net.*

Scoping materials will be available at the meetings and are also available on the LACMTA Web site at *http://www.metro.net/eastside.* Hard copies of the scoping materials are available from Mr. David Monks, LACMTA at 213 922–7456 or *Monksd@metro.net.*

An interagency scoping meeting will be held on Thursday, November 8, 2007, from 10 a.m. to 12 p.m. at LACMTA, One Gateway Plaza, 3rd Floor Board Overflow Room, Los Angeles, CA 90012. Representatives of Native American tribal governments and of all Federal, State, and local agencies that may have an interest in any aspect of the project will be invited by phone, letter, or e-mail.

ADDRESSES: Written comments on this Early Scoping Notice should be sent to Ms. Kimberly Yu, Project Manager, Los Angeles County Metropolitan Transportation Authority, One Gateway Plaza, Los Angeles, CA 90012, phone 213–922–7910, e-mail *yuki@metro.net.* The locations of the early scoping meetings are given above under **DATES**.

FOR FURTHER INFORMATION CONTACT: Mr. Ray Tellis, Team Leader, Los Angeles Metropolitan Office, Federal Transit Administration, 888 South Figueroa Street, Suite 1850, Los Angeles, CA 90017, phone 213–202–3950, e-mail *ray.tellis@dot.gov.*

SUPPLEMENTARY INFORMATION:

Early Scoping

The FTA and LACMTA invite all interested individuals and organizations, public agencies, and Native American tribes to comment on the scope of the planning Alternatives Analysis, including the purpose and need for transit improvements in the corridor, the alternatives transit modes and alignments to be considered, and the types of impacts to be evaluated. Comments at this time should focus on the purpose and need for transit improvements in the corridor;

alternatives that may be less costly or have less environmental impacts while achieving similar transportation objectives; and the identification of any significant social, economic, or environmental issues that should be considered in developing the alternatives.

Purpose and Need for Action

The project purpose is to improve public transit service and mobility in the Eastside Extension Phase II Transit Corridor. The project would provide the study area an improved fixed-guideway east-west transit service from the Metro Gold Line Eastside Extension currently under construction, to cities further east of the City of Los Angeles. Possible eastern extensions from the Metro Gold Line would generally continue east parallel to or along State Route 60, Beverly Boulevard, Olympic Boulevard or Whittier Boulevard. The overall goal of the proposed project is to improve mobility in the Eastside Extension Phase II Transit Corridor by extending the benefits of the existing Metro Gold Line and bus investments beyond the current terminus. Mobility problems and potential improvements for this corridor have been well documented in many studies that are available from Metro's Record's Management Department including numerous Metro Red Line planning studies, Eastside Transit Corridor Studies: Re-Evaluation Major Investment Study (2000), Southern California Association of Governments (SCAG) planning studies, the Metro Rapid Demonstration Project (2000), and in the Southern California Association of Governments Regional Transportation Plan (2004). Additional considerations supporting the project's need include:

- The concentration of activity centers and destinations in the Eastside Extension Phase II Transit Corridor;
- Increasing traffic congestion on the highway network throughout the Eastside Extension Phase II Transit Corridor, which has led to public and political support for a high-capacity transit alternative to the automobile;
- The County General Plan of the County of Los Angeles which is transit-supportive;
- The existing concentration of transit supportive land uses in the Eastside Extension Phase II Transit Corridor;
- The high population and employment densities in the Eastside Extension Phase II Transit Corridor;
- Local redevelopment plans that are highly support of, and dependent on, high capacity transit services in the Eastside Extension Phase II Transit Corridor;
- The existing high ridership levels on bus lines in the Eastside Extension Phase II Transit Corridor;
- Significant transit dependent population in the Eastside Extension Phase II Transit Corridor;
- Forecasts of significant future population and employment growth in the Eastside Extension Phase II Corridor;
- Existing and future travel demand patterns that demonstrate a strong and growing demand for high-capacity transit in the Eastside Extension Phase II Corridor;
- Emerging travel patterns associated with a job-rich study area that has led to significant westbound congestion during the morning rush hours and corresponding eastbound congestion during the evening rush hours; and
- Local policy directed toward travel demand management and transit solutions rather than the expansion of the street and highway network.

Alternatives

The Eastside Extension Phase II Corridor Study proposes to extend transit from the Metro Gold Line Eastside Extension to cities east of Los Angeles. Historically two routes have been previously considered for this extension; to the City of Whittier via Atlantic and Whittier Boulevards and the City of Whittier via Beverly Boulevard, Paramount Boulevard and Whittier Boulevard.

Light rail transit, the transit mode that is currently used in the Metro Gold Line, is being considered. It normally follows an at-grade configuration although underground and aerial configurations may also be considered in some locations. Other transit modes, including Bus Rapid Transit (BRT), high speed trolley and any other reliable, cost-effective forms of fixed guideway transit may also be considered. Proposed station sites (along two alternative alignments) include Beverly/Atlantic, Beverly/Gerhart, Beverly/Garfield, Beverly/Wilcox, Beverly/Montebello, Beverly/4th, Whittier/Gerhart, Whittier/Garfield, Whittier/Wilcox, Whittier/Montebello, Whittier/Rosemead, Whittier/Passons, Whittier/Norwalk, Whittier/Arizona, Whittier/Atlantic, and Beverly/Arizona.

Future No-Build Alternative—The study will consider the transportation and environmental effects if no new major transit investments beyond those that have already been planned are implemented in this corridor. This alternative will include the highway and transit projects in the current Metro Long Range Transportation Plan and the 2030 Southern California Association of Governments Regional Transportation Plan. For purposes of the planning Alternatives Analysis, the major fixed guideway investments under study for the Exposition Transit Corridor Phase 2 and Crenshaw Transit Corridor projects would not be included in the Future No-Build Alternative. The completion of the Metro Rapid Bus Program would be included as well as possible additional feeder bus networks to serve the region's major activity centers.

Transportation System Management Alternative (TSM)—The study will consider the effects of modest improvements in the highway and transit systems beyond those in the Future No-Build Alternative. The TSM Alternative would evaluate low-cost enhancements to the Future No-Build Alternative and would emphasize transportation system upgrades, such as intersection improvements, minor road widening, traffic engineering actions, bus route restructuring, shortened bus headways, expanded use of articulated buses, reserved bus lanes, expanded park-and-ride facilities, express and limited-stop service, signalization improvements, and timed-transfer operations.

In addition to the alternatives described above, other reasonable alternatives identified through the early scoping process will be considered for potential inclusion in the planning Alternatives Analysis. Alternative modes, vertical or horizontal alignments, or station locations may emerge from the early scoping process.

FTA Procedures

Early scoping is an optional element of the National Environmental Policy Act (NEPA) process that is particularly useful in situations where, as here, a proposed action (the locally preferred alternative) has not been identified and alternative modes and major alignment variations are under consideration in a broadly-defined corridor. While NEPA scoping normally follows issuance of a notice of intent, which describes the proposed action, it ''may be initiated earlier, as long as there is appropriate public notice and enough information available on the proposal so that the public and relevant agencies can participate effectively.'' See the Council on Environmental Quality's ''''Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations,'' 46FR 18026, 18030 (1981). In this case, the available information is more than adequate to permit the public and relevant agencies to participate effectively in early scoping and the planning Alternatives Analysis.

LACMTA may seek New Starts funding for the proposed project under 49 U.S.C. 5309 and will, therefore, be subject to New Starts regulation (49 Code of Federal Regulations [CFR] Part 611). The New Starts regulation requires a planning Alternatives Analysis that leads to the selection of a Locally Preferred Alternative by LACMTA and the inclusion of the locally preferred alternative in the long-range transportation plan adopted by the Southern California Association of Governments. The planning Alternatives Analysis will examine alignments, technologies, station locations, costs, funding, ridership, economic development, land use, engineering feasibility, and environmental factors in the corridor. The New Starts regulation also requires the submission of certain project-justification information in support of a request to initiate preliminary engineering. After the identification of a proposed action at the conclusion of the planning Alternatives Analysis, if preparation of an environmental impact statement is warranted, a Notice of Intent (NOI) will be published in the **Federal Register** and the scoping of the EIS/EIR will be continued by soliciting and considering comments on the results of the planning Alternatives Analysis, the purpose and need for the proposed action, the range of alternatives to be considered in the EIS/EIR, and the potentially significant environmental and community impacts to be evaluated in the EIS/EIR.

Concurrent will publication of the NOI pursuant to NEPA, an NOP will be distributed pursuant to CEQA. In conjunction with this final scoping of the EIS/EIR and consistent with provisions of 23 U.S.C. 139 and CEQA, invitations will be extended to other Federal and non-Federal agencies that may have an interest in this matter to be participating agencies. A plan for coordinating public and agency participation in the environmental review process and for commenting on the issues under consideration at various milestones of the process will be prepared and posted on the LACMTA Web site at *http://www.metro.net/eastsidephase2.*

Issued on: October 25, 2007.

Leslie T. Rogers,

Regional Administrator, Region IX, Federal Transit Administration.

[FR Doc. 07–5406 Filed 10–30–07; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Proposed Program Guidance Circulars

[Docket Nos. FTA–2007–29126, FTA–2007–29122, FTA–2007–29123, FTA–2007–29125]

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Proposed Program Guidance Circulars; Extension of Comment Periods.

SUMMARY: On September 28, 2007, the Federal Transit Administration (FTA) published notices seeking comment on four program guidance circulars—the Metropolitan Planning Program and State Planning and Research Program Grants; the Capital Investment Program; the Grant Management Requirements; and Third Party Contracting. This document extends the comment periods of each of these notices. The reasons for extending the comment period are three-fold. First, the FTA wants to stagger the comment period so the public has more time to provide meaningful comments, which in turn will result in better guidance for our customers. Second, FTA currently has a major rulemaking out for comment, which may create hardship on those wishing to comment on circulars as well as the rulemaking. Finally, DOT had some difficulty migrating from the USDOT docket system to the Federal Government's new E-rulemaking portal, which has caused some confusion among commenters.

DATES: The new comment periods are as follows:

- Metropolitan Planning Program and State Planning and Research Program Grants (Docket No. FTA–2007–29126)—the comment period ends November 30, 2007.
- Grant Management Requirements (Docket No. FTA–2007–29122)—the comment period ends January 4, 2008.
- Capital Investment Program (Docket No. FTA–2007–29123)—the comment period ends January 25, 2008.
- Third Party Contracting (Docket No. FTA–2007–29125)—the comment period ends February 15, 2008.

ADDRESSES: To ensure your comments are not entered more than once into the docket, submit comments identified by the appropriate docket number by only one of the following methods:

1. *Web site: www.regulations.gov.* Follow the instructions for submitting comments on the U.S. Government electronic docket site. All electronic submissions must be made to the U.S. Government electronic site at *www.regulations.gov.* Commenters should follow the instructions below for mailed and hand-delivered comments.
2. *Fax:* 202–493–2251.
3. *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
4. *Hand-Delivery:* To the Docket Management Facility: U.S. Department of Transportation, Docket Operations, M–30, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Fridays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For the Metropolitan Planning Docket contact Victor Austin at 202–366–2996 or e-mail at *victor.austin@dot.gov,* or Christopher VanWyk by phone at 202–366–1733 or e-mail at *christopher.vanwyk@dot.gov.* For the Grant Management Requirements Docket contact Jamie Pfister at 404–865–5632 or e-mail at *jamie.pfister@dot.gov,* or Jayme Blakesley at 202–366–0304 or e-mail at *jayme.blakesley@dot.gov.* For the Capital Investment Program Docket contact Kimberly Sledge at 202–366–2053 or e-mail at *kimberly.sledge@dot.gov,* or Bonnie Graves at 202–366–0944 or e-mail at *bonnie.graves@dot.gov.* For the Third Party Contracting Docket contact James Harper at 202–366–1127 or e-mail at *james.harper@dot.gov,* or Kerry Miller at 202–366–1936 or e-mail at *kerry.miller@dot.gov.*

SUPPLEMENTARY INFORMATION: On September 28, 2007, FTA published four separate notices (72 FR 55624 @ Part III) seeking public comment on proposed guidance relating to the Metropolitan Planning Program and State Planning and Research Program Grants (8100.1B); the Capital Investment Program (9300.1A); the Grant Management Requirements (5010.1D); and Third Party Contracting (4220.1E). The proposed guidance or circular revisions are a product of changes made by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU, Pub. L. 109–59), signed into law on August 10, 2005. The circulars themselves are not contained in the notices but rather in the docket(s) @ *www.regulations.gov* under the specific docket numbers indicated above.

FTA has determined that there is good cause to extend the comment periods to allow for more time to provide meaningful comments on the proposed

circulars, which will result in better guidance for our customers.

Issued in Washington, DC, this 26th day of October, 2007.

James S. Simpson,

Administrator.

[FR Doc. E7–21462 Filed 10–30–07; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF THE TREASURY

Discussion Outline for Consideration by the Advisory Committee on the Auditing Profession

AGENCY: Office of the Under Secretary for Domestic Finance, Treasury.

ACTION: Request for Comments.

SUMMARY: The Department of the Treasury's Advisory Committee on the Auditing Profession is soliciting public comment on the discussion outline prepared at the direction of and in consultation with the Advisory Committee's Co-Chairs, Arthur Levitt, Jr. and Donald T. Nicolaisen. The discussion outline includes a list of issues and potential consideration points that the Advisory Committee may evaluate.

DATES: Comments should be received by November 30, 2007.

ADDRESSES: The public is invited to submit comments with the Advisory Committee by any of the following methods:

Electronic Comments

• Use the Department's Internet submission form (*http://www.treas.gov/offices/domestic-finance/acap/comments*); or

Paper Comments

• Send paper comments in triplicate to Advisory Committee on the Auditing Profession, Office of Financial Institutions Policy, Room 1418, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

In general, the Department will post all comments on its Web site (*http://www.treas.gov/offices/domestic-finance/acap/comments*) without change, including any business or personal information provided such as names, addresses, e-mail addresses, or telephone numbers. The Department will also make such comments available for public inspection and copying in the Department's Library, Room 1428, Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect comments by telephoning (202) 622–0990. All comments, including attachments and other supporting materials, received are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Kristen E. Jaconi, Senior Policy Advisor to the Under Secretary for Domestic Finance, Department of the Treasury, Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, at (202) 927–6618.

SUPPLEMENTARY INFORMATION: At the request of the Co-Chairs of the Advisory Committee on the Auditing Profession, the Department is publishing this release soliciting public comments on the issues that the Advisory Committee proposes to consider.

The Advisory Committee was officially established on July 3, 2007 with the filing of its Charter with Congress. The Charter provides that the Advisory Committee's objective is to provide informed advice and recommendations to the Secretary of the Treasury and the Department on the sustainability of a strong and vibrant auditing profession. The Advisory Committee adopted By-Laws and Operating Procedures on October 15, 2007. The Charter and By-Laws and Operating Procedures direct the Advisory Committee to consider the following areas of inquiry:

• The auditing profession's ability to cultivate, attract, and retain the human capital necessary to meet developments in the business and financial reporting environment and ensure audit quality for investors;

• Audit market competition and concentration and the impact of the independence and other professional standards on this market and investor confidence; and

• The organizational structure, financial resources, and communication of the auditing profession.

The Charter also directs the Advisory Committee to work with a view to furthering the mission of the Department, as the steward of the economic and financial systems of the United States, to promote and encourage the conditions for prosperity and stability in the United States and the rest of the world and to predict and prevent, to the extent possible, economic and financial crises.

The Advisory Committee considered the discussion outline at its first public meeting held on October 15, 2007. The Co-Chairs of the Advisory Committee have asked the Department to publish the discussion outline for public comment. The full text of the discussion outline is attached as an Appendix and also may be found on the Web page of the Advisory Committee at *http://www.treas.gov/offices/domestic-finance/acap/index.shtml*. The discussion outline identifies in general terms the issues and consideration points that the Advisory Committee may evaluate. All interested parties are invited to submit their views in writing, on any or all of the subjects identified, whether some subjects identified should not be considered for any reason (such as to conserve resources on other, more critical subjects, or because of the limited length of the Advisory Committee's term) or on any other matter relating to the current sustainability of a strong and vibrant auditing profession that the Advisory Committee should consider addressing.

General Request for Comment: Any interested person wishing to submit written comments on any aspect of the discussion outline, as well as on other matters relating to the Advisory Committee's work, is requested to do so. This notice is published at the request of the Co-Chairs of the Advisory Committee. The Advisory Committee will consider all comments received.

Dated: October 24, 2007.

Taiya Smith,

Executive Secretary.

Appendix—Discussion Outline for Consideration by the Advisory Committee on the Auditing Profession

Over-Arching Principles

• The work and recommendations of the Advisory Committee on the Auditing Profession should be designed to further the mission of the Department of the Treasury to promote and encourage prosperity and stability by both improving the quality of the audit process and audits and ensuring the viability and resilience of the public company auditing profession.

• Enhancing the quality of the audit process and audits should contribute to the viability and resilience of the public company auditing profession.

• Confidence in the public company auditing profession is enhanced and strengthened when the profession operates in a manner transparent to investors and market participants, and adopts governance best practices.

• The quality of the audit process and audits is accomplished when the credibility of the audit meets the needs

of investors and increases as the following objectives are achieved.

- ○ The audit process and audits should contribute to investor confidence in the financial statements by ensuring that the financial statements are reliable, complete, and timely.
- ○ The audit process and audits should contribute to the transparency of financial reporting for preparers and investors.
- ○ Audits should lower the cost of capital to companies that are audited (as a group and over time).
- ○ The benefits of the audit process and audits to investors, preparers, and the marketplace should outweigh the costs of the audit process and audits to preparers and their owners.
- ○ Investors and the marketplace should understand the purposes, limitations, and results of the audit process and audits, and have confidence in the credibility of the audit provided and the quality of the services performed.
- ○ Material financial frauds are detected and reported in a timely fashion adding to investor confidence in the reliability of the audit process and audits.

• The viability and resilience of the public company auditing profession are enhanced when a high quality audit is delivered to investors and the following objectives are achieved.

- ○ The public company auditing profession should attract and develop employees adequately prepared to perform high quality audits.
- ○ The public company auditing profession should be financially and structurally sound.
- ○ The public company auditing profession should operate under standards of independence necessary to maintain investor confidence and the quality of audit processes and audits.
- ○ The audit market benefits from a competitive and innovative population of auditing firms.

1. Consideration of Prior Recommendations.

1.1. Consider the recommendations of past committees studying the auditing profession, including:

1.1.1. Commission on Auditors' Responsibilities (''Cohen Commission'') (1978).

1.1.2. National Commission on Fraudulent Financial Reporting (''Treadway Commission'') (1987).

1.1.3. Panel on Audit Effectiveness (''O'Malley Panel'') (2000).

2. Human Capital and Its Impact on Audit Quality.

2.1. Consider whether the increase and enrichment of the pool of human capital in the public company auditing profession can improve audit quality.

2.2. Identify and consider potential areas of inquiry and courses of action:

2.2.1. Recruitment and training.

2.2.2. Retention, professional advancement, and alternatives.

2.2.3. Education.

2.2.3.1. Undergraduate.

2.2.3.2. Graduate.

2.2.3.3. Continuing education.

2.2.3.4. Relationship between continuing education and professional development.

2.3. Consider the recruitment, training, retention of accounting graduates.

2.3.1. Recruitment.

2.3.1.1. Demand for accountants predicted to grow 18–26% through 2014 (U.S. Bureau of Labor Statistics).

2.3.1.2. Increasing level of retirements and lack of commensurate replacement may portend a shortage of qualified accountants.

2.3.1.3. Enrollments in accounting programs and accounting graduates up 19% from 2000 to 2004. Increase of 9% to 40,400 Bachelor's degree recipients from 2003 to 2004.

2.3.1.4. Women were more than half of the 2006 accounting graduates. In 2004, minorities accounted for 23% of accounting graduates. Women account for 19% of all auditing firm partners. Minorities held 13.5% and caucasian women held 32.4% of all ''officials and managers'' positions in the accounting industry; 7% of auditing firms, CPAs are minorities (AICPA).

2.3.1.5. Consider the actions that can be undertaken to seek to ensure that there is a sufficient number of graduates to meet the growing demand for auditing services.

2.3.1.6. Consider the actions that can be undertaken to seek to ensure the attraction of a diverse group of individuals to the auditing profession.

2.3.1.7. Consider and compare the competitiveness of auditing industry recruitment with other industries and disciplines who recruit similar students and the reasons for the success of some of these other industries and disciplines. Consider the compensation structure in these other industries and disciplines.

2.3.2. Training and supervision, and evaluation; continuing education.

2.3.2.1. The largest auditing firms offer training programs to employees as a supplement to undergraduate and post-graduate education.

2.3.2.2. Consider whether and how training can be enhanced to seek to ensure high quality audits.

2.3.2.3. Consider whether and how training can be enhanced to foster recruitment, retention, and professional advancement.

2.3.2.4. Consider whether high ethical standards are incorporated into training and employee evaluations.

2.3.2.5. Consider whether employees are trained and evaluated to make decisions that ensure the representational faithfulness of the financial statements.

2.3.2.6. Consider the impact of the size of an auditing firm and its ability to recruit, retain, and offer training to accounting graduates on audit quality.

2.3.2.7. Consider whether and how continuing education programs can be enhanced to seek to ensure high-quality audits.

2.3.2.8. Consider whether and how continuing education can be enhanced to foster recruitment, retention, and professional advancement.

2.3.2.9. Consider how the use of the Internet and other technological developments can be used to enhance training and continuing education.

2.3.2.10. Consider whether and how training and continuing education relating to International Financial Reporting Standards and international auditing standards need to be enhanced.

2.3.2.11. Consider whether and how training and continuing education relating to financial reporting tools and developments, such as eXtensible Business Reporting Language, can be enhanced.

2.3.2.12. Consider whether improved supervision at the auditing firms is needed to ensure high-quality audits. Consider ways to foster improved supervision, if needed. Consider whether and how training and continuing education can be enhanced to provide accountants with improved management and supervisory skills as they reach the supervisory levels.

2.3.2.13. Consider the processes by which auditing firms train and develop employees for the appropriate auditing assignments.

2.3.2.14. Consider whether the Public Company Accounting Oversight Board should have a role in enhancing training, supervision, and continuing education, and, if so, what that role should be. Consider interviewing the PCAOB regarding its inspection process.

2.3.3. Retention.

2.3.3.1. AICPA survey: 15–20% turnover rates at the largest auditing firms; lower turnover rates at smaller firms.

2.3.3.2. Consider the ways auditing firms can improve retention of quality partners and employees. Consider the reasons accountants are leaving the

profession. Consider whether the public company auditing profession is viewed as providing a challenging and fulfilling work environment. Consider whether the public company auditing profession is respected and whether the degree of respect impacts employee retention. Consider whether and how liability risk impacts partner and employee retention. Consider whether and how the auditor independence standards impact partner and employee retention. Consider whether the auditing firms are investing in technologies that can improve employee retention and experience. Consider the compensation structure of auditors vis-à-vis other financial services industry professionals.

2.4. Consider the state of accounting education and CPA licensing requirements.

2.4.1. Consider the accounting curriculum.

2.4.1.1. Multi-disciplinary approach vs. technical approach.

2.4.1.1.1. Debate since the late 1950s.

2.4.1.1.2. Consider whether the accounting curriculum should focus on technical accounting standards or also reflect to a greater degree a multi-disciplinary approach focusing on business, finance, law, and ethics and other areas.

2.4.1.1.3. Consider what approach is more likely to ensure high quality audits.

2.4.1.1.4. Consider what approach teaches high ethical standards.

2.4.1.1.5. Consider whether there is a role for increased clinical education at the undergraduate or graduate level. Consider whether the current accounting curriculum prepares accounting graduates for their first positions in the auditing industry.

2.4.1.1.6. Consider the impact on the curriculum of the potential acceptance of International Financial Reporting Standards and international auditing standards.

2.4.1.1.7. Consider the impact on the curriculum of the Internet and technological developments, such as eXtensible Business Reporting Language.

2.4.1.2. The 150-hour requirement, the 120-hour requirement, and the professional school of accountancy.

2.4.1.2.1. In 1998, the American Institute of Certified Public Accountants approved the 150-hour requirement for application for AICPA membership, reasoning the extra year or 30 hours of post-graduate education should replace the 120-hour requirement, given accounting complexity.

2.4.1.2.2. 48 of 54 states and jurisdictions have adopted the 150-hour requirement, thus making 150 hours mandatory to be licensed as a CPA. Yet many states test at the 120-hour level.

2.4.1.2.3. Consider the costs and benefits of the 150-hour requirement.

2.4.1.2.4. Consider the impact of the 150-hour requirement upon the recruitment of undergraduates as accounting majors.

2.4.1.2.5. Consider whether the 150-hour requirement has improved audit quality.

2.4.1.3. Academics and practice.

2.4.1.3.1. Some observers have suggested that much academic research focuses on social science research rather than the skills and judgments needed to ensure high quality audits. Consider the possible ''schism'' between the academic and practice communities.

2.4.1.3.2. Consider what ''common body of knowledge'' accounting students should acquire.

2.4.1.3.3. Consider whether accounting academics need to be encouraged to undertake a more ''practice-oriented'' approach, including more practice-oriented research.

2.4.1.3.4. Consider whether professional training programs and continuing education better provide the additional information and perspective beyond technical skill and academic education that can assist in developing the judgment and other practical skills necessary for high-quality audits.

2.4.2. Consider the status of accounting faculty.

2.4.2.1. Shortage of faculty PhDs.

2.4.2.1.1. In 1967, the Association to Advance Collegiate Schools of Business decided that the doctorate was the terminal degree needed to teach accounting in the collegiate setting. To maintain the AACSB accreditation, 50% of faculty must have doctorates in accounting.

2.4.2.1.2. One-half of accounting faculty is eligible to retire in the next few years: One-third of accounting faculty is 60 or older; one-half is 55 or older.

2.4.2.1.3. Consider the reasons for this potential accounting faculty shortage, including doctoral program recruitment and compensation.

2.4.2.1.4. Consider ways to increase the number of accounting faculty. Consider the AACSB accreditation requirements.

2.4.2.2. The impact of an increasingly complex and globalized financial reporting environment on accounting faculty.

2.4.2.2.1. Consider ways to ensure that accounting faculty is able to prepare students to undertake high quality audits in a complex financial reporting environment. Consider ways to encourage faculty to keep apprised of financial reporting and auditing profession developments.

2.4.2.2.2. Consider the impact of a more multi-disciplinary approach to the accounting curriculum.

2.4.2.2.3. Consider the impact of International Financial Reporting Standards and international auditing standards on faculty resources and requirements.

2.4.2.2.4. Consider the impact of the potential increased use of clinical programs on faculty resources and requirements.

2.4.2.2.5. Consider the benefits of and how to balance the class room education experience for students between theory and practical experience.

2.4.3. Consider the adequacy of CPA licensing requirements.

2.4.3.1. Consider and understand the role of the State Boards of Accountancy in licensing, education, and enforcement.

2.4.3.2. Consider the education requirements.

2.4.3.3. Consider the CPA examination.

2.4.3.4. Consider the professional experience requirements.

2.4.3.5. Consider the continuing education requirements.

3. The Auditing Firm and the Audit: Organization, Financial Resources, and Communication.

3.1. Consider the state licensing regime.

3.1.1. Consider the impact of a multi-state licensing regime on audit quality.

3.1.2. All 50 states and 5 territories through state licensing boards license certified public accountants. State boards set requirements for moral character, higher education, continuing education, experience, and examination for licensure as a CPA. State boards set ethical and continuing practice standards and possess disciplinary powers.

3.1.3. Consider the costs and benefits of a multi-state licensing regime.

3.1.4. Consider whether the Uniform Accountancy Act, promulgated by the American Institute of Certified Public Accountants and the National Association of State Boards of Accountancy and aiming to increase licensing uniformity, addresses the inefficiencies of multi-state licensing.

3.1.5. Consider the relationship between the multi-state licensing regime and the Public Company Accounting Oversight Board.

3.2. Consider whether a professional qualification or other mechanism for public company auditing firms, in addition to registration with the Public Company Accounting Oversight Board, should be established similar to what

currently exists for individuals with CPA licensing.

3.3. Consider whether and, if so, how the Public Company Accounting Oversight Board can enhance qualification and related mechanisms for public company auditing firms as a result of its registration, inspection, or disciplinary regime.

3.3.1. Examining qualifications of individuals or firms.

3.3.2. Training or remediation.

3.3.3. Monitoring and supervision.

3.4. Consider insurability and liability risk.

3.4.1. Liability.

3.4.1.1. A September 2006 European Commission study reported that the total costs of judgments, settlements, legal fees, and related expense for U.S. audit practices of the largest accounting firms had risen to $1.3 billion in 2004, or 14.2% of revenue, up from 7.7% in 1999.

3.4.1.2. Consider the impact of auditor liability risk on human capital, the nature of the audit process, and the conduct of audits, including the use of judgment and possibility of ''defensive auditing,'' and other aspects of audit quality, including whether potential liability increases audit quality.

3.4.1.3. Consider major financial frauds and how auditor behavior and/or audit failure has contributed to increased liability exposure and costs.

3.4.1.4. Consider whether any potential changes should be considered in auditor liability regimes.

3.4.1.5. Consider how altering auditor liability regimes would impact audit quality.

3.4.1.6. Consider how altering auditor liability regimes would impact investors.

3.4.1.7. Consider the costs and benefits of various auditor liability regimes (and corresponding disclosure regimes) to investors and the marketplace (including issues of moral hazard).

3.4.2. Status of insurability.

3.4.2.1. Smaller auditing firms are generally able to purchase commercial insurance to cover professional liability claims. Smaller firms can purchase insurance through American Institute of Certified Public Accountants, which established the AICPA Professional Liability Insurance Program in 1967, currently serving over 24,000 auditing firms.

3.4.2.2. The largest auditing firms are unable to purchase commercial insurance directly in the marketplace and must use captive insurance funds.

3.4.2.3. Understand the insurance and risk management practices of the larger auditing firms in the United States.

3.4.2.4. Consider how major audit failures have impacted the insurability of the auditing firms.

3.4.2.5. Consider the impact of potential litigation exposure on audit quality.

3.4.2.6. Consider whether auditing firms in the United States should be required to maintain a certain level of insurance.

3.4.2.7. Consider the reasons why the largest auditing firms are prevented from being offered commercial insurance.

3.4.2.8. Consider how altering insurance structures or regimes would impact audit quality.

3.4.2.9. Consider the costs and benefits of various insurance structures and regimes to investors and the marketplace (including issues of moral hazard).

3.5. Consider organizational structure.

3.5.1. Most auditing firms in the United States are organized as limited liability entities, the largest being limited liability partnerships. The largest auditing firms have global networks of affiliates.

3.5.2. Consider the impact these limited liability entities have on the quality of corporate governance, including management succession, oversight, compensation, and audit quality.

3.5.3. State law and independence standards may prohibit investment of outside capital, typically limiting capital investment and partnership interests to the auditing partners themselves.

3.5.4. Consider whether alternative structures exist for auditing firms beyond the limited liability entity model and whether and how any such structure could enhance audit quality.

3.5.5. Consider how the global network of affiliate structure impacts audit quality.

3.5.6. Consider whether and how consistency is ensured across auditing firms. Consider whether there is consistency between auditing firms' global affiliate structure and their integrated global marketing activities and practice activities. Consider whether and how any such inconsistencies within a network impact audit quality.

3.5.7. Consider whether there is an approach to a global structure and organization that could lead to enhanced audit quality. Consider the feasibility of such a structure and any regulatory or financial consequences. Consider how liability and insurance issues relate to global structuring issues.

3.5.8. Consider how the varying degree of quality in financial reporting and auditing and regulatory and enforcement regimes impact organizational structure and capital resources.

3.5.9. Consider how the potential acceptance of International Financial Reporting Standards in the United States and the greater use of fair value and mark-to-model accounting will impact the largest auditing firms' network of affiliates.

3.6. Consider transparency and governance.

3.6.1. Auditing firms provide the Public Company Accounting Oversight Board with proprietary information. The European Union recently adopted reporting requirements (to be effective in June 2008) for public company auditors relating to issues such as a firm's legal structure and ownership, governance, and internal quality control system.

3.6.2. Consider what, if any, governance failures at the auditing firms occurred and contributed to failures in the provision of audit services and non-attest services.

3.6.3. Consider to what extent, if any, auditing firms should disclose to the public their internal organization, governance, and financial resources and whether and how such a practice could enhance audit quality.

3.6.4. Consider whether and, if so, there should be public participation in firm governance, for example through an advisory board or ombudsman or other mechanism, and whether and how such a mechanism could enhance audit quality.

3.6.5. Consider whether the auditing firms, themselves, should prepare audited GAAP financial statements for filing with the Public Company Accounting Oversight Board or the public.

3.6.6. Consider how increased transparency and strengthened governance affects audit quality.

3.6.7. Consider how state laws and auditor independence standards impact auditing firm governance.

3.6.8. Consider whether and how governance matters impact issues and conclusions regarding liability and insurance.

3.7. Auditor responsibility for fraud detection and improving communication with investors.

3.7.1. Examine the auditor's responsibility for fraud detection and whether it is resulting in enhanced investor confidence in the reliability of the financial statements.

3.7.2. The standard auditor report consists of a standardized four paragraphs stating management and auditor responsibilities, the nature of

the audit, the auditor's opinion on the financial statements, and, if the audited company is subject to the Sarbanes-Oxley Act, the effectiveness of internal controls.

3.7.3. Consider whether the auditor report should be more descriptive so as to improve communication with the public and investor community.

3.7.4. Consider whether and, if so, how the auditor report could more clearly define the role of the auditor vis-á-vis financial statements.

3.7.5. Consider the role of the auditor in the audit.

3.7.6. Consider the expectations of investors and the marketplace relating to the auditor report and the audit. Consider whether and, if so, what sort of fraud investors and the marketplace expect auditors to detect.

3.7.7. Consider the impact, if any, of changes in auditor reports on audit quality.

4. Auditing Profession Structure: Competition, Concentration, Independence, and Other Professional Standards.

4.1.1. According to a 2004 GAO Report, the largest auditingfirms audit over 78% of U.S. public companies and 99% of public company revenues. According to a 2004 J.D. Power & Associates survey, about one of every eight public companies retained three or more of the largest auditing firms for attest and non-attest work.

4.1.2. Examine whether there should be fundamental changes made in who pays the audit fee to the auditor.

4.1.3. Consider the impact on the structure of the public company auditing profession of the following:

4.1.3.1. Auditor independence standards.

4.1.3.1.1. Consider how the auditor independence standards impact audit quality, audit market competition, and the pool of human capital.

4.1.3.1.2. Consider whether there is an ''appropriate balance'' between the auditing services and the non-attest services that auditing firms are providing today.

4.1.3.1.3. Consider how auditing firms' employee assignment process relating to auditing services and non-attest services impacts the pool of human capital.

4.1.3.2. Mandatory partner and firm rotation.

4.1.3.2.1. Consider whether and, if so, how mandatory partner rotation impacts auditing firms and their ability to ensure audit quality.

4.1.3.2.2. Consider whether mandatory partner rotation impacts both the larger and smaller auditing firms in the same way.

4.1.3.2.3. Examine the benefits and costs of periodic firm rotation.

4.1.3.3. Other professional standards.

4.1.3.3.1. Consider whether, and, if so, how other professional standards or requirements impact the structure of the public company auditing profession.

4.1.3.4. Complexity.

4.1.3.4.1. Consider whether, and, if so, how the complexity of business and financial products affects audit quality, including the auditing firms' educational and supervisory roles. Consider whether the complexity of business and public companies, along with the accompanying financial reporting, accounting, and auditing standards prevents auditing firms with fewer resources from entering into the larger public company audit space.

4.1.3.4.2. Consider whether the global convergence of accounting standards and the global convergence of auditing standards encourage more audit market competition.

4.1.3.5. Globalization.

4.1.3.5.1. Consider the relative financial, human resources, and geographical capabilities of the largest auditing firms, the mid-size auditing firms and the smaller auditing firms.

4.1.3.5.2. Consider and compare the capabilities of the different sizes of auditing firms with the requirements of the large, mid, and small capitalization public companies.

4.1.3.5.3. Consider how the increasing globalization of the capital markets affects audit market concentration among the largest auditing firms who have global networks of affiliates.

4.1.3.5.4. Consider whether larger auditing firm resources are necessary for a high quality audit for larger, international companies.

4.1.3.5.5. Consider the ability of certain firms to carve out niches among certain multi-national sectors.

4.1.3.5.6. Consider how the potential acceptance of International Financial Reporting Standards and international auditing standards will impact audit market competition.

4.1.4. Consider how audit market concentration impacts audit quality.

4.1.4.1. Consider the reasons for public companies' seeking new auditors.

4.1.4.2. Consider whether auditing firms are competing for services based on audit quality.

4.1.4.3. Consider the bases on which auditing firms compete today in the United States and internationally, including an assessment of audit fee changes when auditors compete for new audits.

4.1.5. Consider the potential consequences of a larger auditing firm failure.

4.1.5.1. Consider the sort of risks a larger auditing firm failure poses to the marketplace and investors.

4.1.5.2. Consider the causes of major audit failures and steps that could be taken to prevent their reoccurrence.

4.1.5.3. Consider whether and, if so, how, securities and auditing firm regulators should attempt to mitigate the risk or the impact of a larger auditing firm failure.

4.1.6. Consider ways to increase audit market competition.

4.1.6.1. Consider the impact of auditing firm mergers on industry competition and whether a public policy change with respect to a lack of competition is warranted.

4.1.6.2. Consider whether regulators are now faced with a ''Too Big to Fail'' public policy, and if so, consider whether public policy changes are warranted and the nature of those changes.

4.1.6.3. Consider how greater auditor choice can be fostered in the marketplace by the public and private sectors.

4.1.6.4. Consider whether there are public company sectors where audit market choice is growing.

4.1.6.5. Consider the ability of certain auditing firms to create niche-markets.

4.1.6.6. Consider how private sector participants, such as underwriters and lawyers, impact audit market choice.

[FR Doc. E7–21402 Filed 10–30–07; 8:45 am]

BILLING CODE 4811–42–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Commercial Alliance Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 2 to the Treasury Department Circular 570, 2007 Revision, published July 2, 2007 at 72 FR 36192.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued under 31 U.S.C. 9305 to the following company: Commercial Alliance Insurance Company (NAIC # 10906). *Business Address:* 415 Lockhaven Drive, Houston, Texas 77073. *Phone:* (713) 960–1214. *Underwriting Limitation b/:* $840,000.

Surety Licenses c/: TX. *Incorporated In:* Texas.

Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570 (''Circular''), 2007 Revision, to reflect this addition.

Certificates of Authority expire on June 30th each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (*see* 31 CFR part 223). A list of qualified companies is published annually as of July 1st in the Circular, which outlines details as to underwriting limitations, areas in which companies are licensed to transact surety business, and other information.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570.*

Questions concerning the Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: October 19, 2007.

Vivian L. Cooper,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 07–5414 Filed 10–30–07; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Request for Applications for the IRS Advisory Committee on Tax Exempt and Government Entities

AGENCY: Internal Revenue Service (IRS); Tax Exempt and Government Entities Division, Treasury.

ACTION: Notice.

SUMMARY: The Internal Revenue Service (IRS) is requesting applications for membership to serve on the Advisory Committee on Tax Exempt and Government Entities (ACT). Applications will be accepted for the following vacancies, which will occur in June 2008: Two (2) employee plans; two (2) exempt organizations; one (1) Indian tribal governments; one (1) tax exempt bonds, and two (2) federal, state and local governments. To ensure appropriate balance of membership, final selection from qualified candidates will be determined based on experience, qualifications, and other expertise.

Due Date: Written applications or nominations must be received on or before November 30, 2007.

Application: Applicants may use the ACT Application Form on the IRS Web site (IRS.gov) or may send an application by letter with the following information: Name; Other Name(s) Used and Date(s) (required for FBI check); Date of Birth (required for FBI check); City and State of Birth (required for FBI Check); Current Address; Telephone and Fax Numbers; and e-mail address, if any. Applications should also describe and document the proposed member's qualifications for membership on the ACT. Applications should also specify the vacancy for with they wish to be considered.

ADDRESSES: Send all applications and nominations to: Steven J. Pyrek; Director TE/GE Communications and Liaison; 1111 Constitution Ave., NW.,—SE.,:T: CL, Penn Bldg; Washington, DC, 20224; FAX: (202) 283–9956 (not a toll-free number); e-mail: *steve.j.pyrek@irs.gov.*

FOR FURTHER INFORMATION CONTACT: Steven Pyrek (202) 283–9966 (not a toll-free number) or by e-mail at *steve.j.pyrek@irs.gov*.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Tax Exempt and Government Entities (ACT), governed by the Federal Advisory Committee Act, Public Law No. 92–463, is an organized public forum for discussion of relevant employee plans, exempt organizations, tax-exempt bonds, and federal, state, local, and Indian tribal government issues between officials of the IRS and representatives of the above communities. The ACT also enables the IRS to receive regular input with respect to the development and implementation of IRS policy concerning these communities. ACT members present the interested public's observations about current or proposed IRS policies, programs, and procedures, as well as suggest improvements. ACT members shall be appointed by the Secretary of the Treasury and shall serve for two-year terms. Terms can be extended for an additional year. ACT members will not be paid for their time or services. ACT members will be reimbursed for their travel-related expenses to attend working sessions and public meetings, in accordance with 5 U.S.C 5703. The Secretary of the Treasury invites those individuals, organizations, and groups affiliated with employee plans, exempt organizations, tax-exempt bonds, and federal, state, local and Indian tribal governments, to nominate individuals for membership on the ACT. Nominations should describe and document the proposed member's qualifications for membership on the ACT. Nominations should also specify the vacancy for which they wish to be considered. The Secretary seeks a diverse group of members representing a broad spectrum of persons experienced in employee plans, exempt organizations, tax-exempt bonds, and federal, state, local and Indian tribal governments.

Nominees must go through a clearance process before selection by the Secretary of the Treasury. In accordance with the Department of the Treasury Directive 21–03, the clearance process includes, among other things, pre-appointment and annual tax checks, and an FBI criminal and subversive name check, fingerprint check, and security clearance.

Dated: October 24, 2007.

Steven J. Pyrek,

Designated Federal Official, Tax Exempt and Government Entities Division, Internal Revenue Service.

[FR Doc. E7–21359 Filed 10–30–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Advisory Council to the Internal Revenue Service; Meeting

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: The Internal Revenue Service Advisory Council (IRSAC) will hold a public meeting on Thursday, November 15, 2007.

FOR FURTHER INFORMATION CONTACT: Ms. Jacqueline Tilghman, National Public Liaison, CL:NPL, 7559, 1111 Constitution Avenue, NW., Washington, DC 20224. Telephone: 202–927–9833 (not a toll-free number). E-mail address: **public_liaison@irs.gov*.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), a public meeting of the IRSAC will be held on Thursday, November 15, 2007, from 9 a.m. to 1 p.m. at IRS Headquarters, 1111 Constitution Avenue, NW., Room 3313, Washington, DC 20224. *Issues to be discussed include:* Earned Income Tax Credit (EITC) Communication Strategy, Earned Income Tax Credit (EITC) Return Preparer Strategy, Allowable Living Expense Standards, Information on Independent Contractor or Employee Determinations, Compliance Assurance Program (CAP) Strategy, E-File Issues, and the Industry Issue Resolution Program. Reports from the four IRSAC sub-groups, Large and Mid-size

Business, Small Business/Self-Employed, Wage & Investment, and Tax Gap Analysis will also be presented and discussed. Last minute agenda changes may preclude advance notice. The meeting room accommodates approximately 80 people, IRSAC members and Internal Revenue Service officials inclusive. Due to limited seating, please call Jacqueline Tilghman to confirm your attendance. Ms. Tilghman can be reached at 202–927–9833. Attendees are encouraged to arrive at least 30 minutes before the meeting begins. Should you wish the IRSAC to consider a written statement, please call 202–927–9833, or write to: Internal Revenue Service, Office of National Public Liaison, CL:NPL:7559, 1111 Constitution Avenue, NW., Washington, DC 20224 or e-mail: *public_liaison@irs.gov.

Dated: October 22, 2007.

J. Chris Neighbor,

Designated Federal Official, Branch Chief, Liaison/Tax Forum Branch.

[FR Doc. E7–21358 Filed 10–30–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

United States Mint

Notification of a Refund Offer for Certain 2004 United States Mint Lewis and Clark Coin and Pouch Sets That May Contain Pouches That Are Not Authentic American Indian Products

SUMMARY: In 2004, the United States Mint prepared and marketed a product known as the ''2004 United States Mint Lewis and Clark Coin and Pouch Set.'' This product includes a 2004 Lewis and Clark Expedition Bicentennial Silver Dollar and a small pouch crafted by artisans from one of several American Indian tribes. The United States Mint, however, has now learned that one of the organizations whose artisans produced pouches for the product—the Shawnee Nation United Remnant Band of Ohio—is not officially recognized as an Indian tribe by state or Federal authorities. The Shawnee Nation United Remnant Band of Ohio, therefore, does not have the legal right to claim that the pouches its artisans produced are authentic American Indian products. Accordingly, the United States Mint is offering a refund to members of the public who own a 2004 United States Mint Lewis and Clark Coin and Pouch Set containing a pouch produced by the Shawnee Nation United Remnant Band of Ohio. Owners may ascertain whether their pouch set was crafted by the Shawnee Nation United Remnant Band of Ohio by referring to the Certificate of Authenticity (COA) that accompanies the set. Owners wishing to obtain a refund have two options: (1) Return the entire United States Mint Lewis and Clark Coin and Pouch Set, including the COA from the Shawnee Nation United Remnant Band of Ohio, for a refund of $130.00 (original sales price, plus $10 for shipping and insurance), or (2) return just the pouch and the COA from the Shawnee Nation United Remnant Band of Ohio for a refund of $90.00 (prorated sales price for the pouch, plus $10 for shipping and insurance).

DATES: Refunds will be made until May 1, 2008.

ADDRESSES: To receive a refund, send 2004 United States Mint Lewis and Clark Coin and Pouch Sets, or pouches, by insured mail or overnight delivery to United States Mint, ATTN: Indian Arts & Crafts Return, 801 9th Street, NW., Washington, DC 20001. In the shipping package be sure to include return address mailing information for the refund along with a note indicating that the package is to be directed to the above address.

FOR FURTHER INFORMATION CONTACT: United States Mint, Indian Arts & Crafts Return, 801 9th Street, NW., Washington, DC 20001, or call 1–888–723–2646.

SUPPLEMENTARY INFORMATION: The United States Mint sold a limited number of the 2004 United States Mint Lewis and Clark Coin and Pouch Sets between September 7, 2004, and December 31, 2004. Each set consisted of a proof Lewis and Clark Expedition Bicentennial Silver Dollar, a handcrafted American Indian Pouch, and a COA hand-signed by the American Indian artisan who crafted it, stating the artisan's tribe and its location. The United States Mint worked with the Circle of Tribal Advisors (COTA) to identify artisans from American Indian tribes to craft each unique pouch. When it was selected to produce pouches, the Shawnee Nation United Remnant Band of Ohio was a member in good standing of COTA. However, as we now have become aware, the Shawnee Nation United Remnant Band of Ohio did not meet the legal requirements to produce and market authentic ''Indian'' products under the Indian Arts and Crafts Act. The Shawnee Nation United Remnant Band of Ohio reportedly dropped its membership in COTA late in 2005, and COTA adjourned late in 2006 at the end of the National Lewis & Clark Bicentennial Commemoration.

Recently, the United States Mint learned that the pouches made by artisans of the Shawnee Nation United Remnant Band of Ohio do not qualify as authentic American Indian products because the Shawnee Nation United Remnant Band of Ohio is not an American Indian Tribe as defined by the Indian Arts and Crafts Act of 1990 (Pub. L. 101–644).

The Indian Arts and Crafts Act of 1990 (Act) is a truth-in-advertising law that prohibits misrepresentation in marketing of Indian arts and crafts products within the United States. It is illegal to offer or display for sale, or sell any art or craft product in a manner that falsely suggests it is Indian produced, an Indian product, or the product of a particular Indian or Indian Tribe or Indian arts and crafts organization, resident within the United States. Under the Act, an Indian is defined as a member of any Federally or state recognized Indian Tribe, or an individual certified as an Indian artisan by an Indian Tribe.

The Act broadly applies to the marketing of arts and crafts by any person in the United States. All products must be marketed truthfully regarding the Indian heritage and tribal affiliation of the producers, so as not to mislead the consumer. It is illegal to market an art or craft item using the name of a tribe if a member, or certified Indian artisan, of that tribe did not actually create the art or craft item.

Neither Federal nor state authorities recognize the Shawnee Nation United Remnant Band of Ohio as an official Indian tribe. Accordingly, the pouches produced by the artisans of the Shawnee Nation United Remnant Band of Ohio are not Indian products pursuant to the terms of the Act.

The Indian Arts and Crafts Board (IACB), an agency located in the U.S. Department of the Interior, was created by Congress to promote the economic development of American Indians and Alaska Natives through the expansion of the Indian arts and crafts market. A top priority of the IACB is the implementation and enforcement of the Indian Arts and Crafts Act of 1990. The United States Mint has been working closely with the IACB to ensure that owners of 2004 United States Mint Lewis and Clark Coin and Pouch Sets understand the law, are aware that the pouches made by the Shawnee Nation United Remnant Band of Ohio are not authentic American Indian products, and have the opportunity to obtain a refund of these products if they elect to return them.

The names of the various artisans and their tribes who crafted the pouches for the United States Mint are identified in the COA accompanying the pouch sets.

Owners may ascertain whether their pouch set was crafted by the Shawnee Nation United Remnant Band of Ohio by referring to the COA.

Owners of a 2004 United States Mint Lewis and Clark Coin and Pouch Set containing a pouch produced by the Shawnee Nation United Remnant Band of Ohio may return the Set for a payment of $130.00, representing the original purchase price of $120.00, plus $10 to defray shipping, handling, and insurance charges. The owners of 2004 United States Mint Lewis and Clark Coin and Pouch Sets containing Shawnee Nation United Remnant Band of Ohio pouches who desire to keep the Lewis and Clark Expedition Bicentennial Silver Dollar may return the pouches, along with the COA, for a prorated refund of $90.00, representing the prorated price of the pouch plus $10 to defray shipping, handling, and insurance charges.

Authority: 31 U.S.C. 5112; Pub. L. 106–126, Title III, 113 Stat. 1647; Pub. L. 109–232, 120 Stat. 395.

Dated: October 26, 2007.

Edmund C. Moy,

Director, United States Mint.

[FR Doc. E7–21463 Filed 10–30–07; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF VETERANS AFFAIRS

Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board; Amended—Notice of Meetings

1—Clinical Research Program will meet on Dec. 5 at VA Central Office (not L'Enfant Plaza Hotel);

2—Neurobiology-C will meet on December 13, 2007 (Not Dec. 14) at St. Gregory Hotel.

The Department of Veterans Affairs gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the subcommittees of the Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board will meet from 8 a.m. to 5 p.m. as indicated below:

Subcommittee for	Date(s)	Location
Infectious Diseases-B	November 7, 2007	Hyatt Arlington.
Mental Hlth & Behav Sci-B	November 8, 2007	Hyatt Arlington.
Hematology	November 9, 2007	Hyatt Arlington.
Immunology-A	November 14, 2007	Hyatt Arlington.
Nephrology	November 16, 2007	Hyatt Arlington.
Mental Hlth & Behav Sci-A	November 19, 2007	L'Enfant Plaza Hotel.
Epidemiology	November 20, 2007	VA Central Office *.
Respiration	November 29, 2007	St. Gregory Hotel.
Cellular & Molecular Medicine	November 29, 2007	VA Central Office *.
Cardiovascular Studies	November 30, 2007	St. Gregory Hotel.
Immunology-B	November 30, 2007	L'Enfant Plaza Hotel.
Neurobiology-E	December 3, 2007	Hyatt Arlington.
Surgery	December 3, 2007	L'Enfant Plaza Hotel.
Infectious Diseases-A	December 4, 2007	VA Central Office *.
Clinical Research Program	December 5, 2007	VA Central Office *.
Gastroenterology	December 6, 2007	L'Enfant Plaza Hotel.
Oncology	December 6–7, 2007	L'Enfant Plaza Hotel.
Neurobiology-A	December 7, 2007	VA Central Office *.
Neurobiology-D	December 10, 2007	VA Central Office *.
Endocrinology	December 10–11, 2007	St. Gregory Hotel.
Neurobiology-C	December 13, 2007	St. Gregory Hotel.

The addresses of the hotels and VA Central Office are: Hyatt Arlington, 1325 Wilson Boulevard, Arlington, VA. L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW., Washington, DC. St. Gregory Hotel, 2033 M Street, NW., Washington, DC. VA Central Office, 1722 Eye Street, NW., Washington, DC.

* Teleconference.

The purpose of the Merit Review Board is to provide advice on the scientific quality, budget, safety and mission relevance of investigator-initiated research proposals submitted for VA merit review consideration. Proposals submitted for review by the Board involve a wide range of medical specialties within the general areas of biomedical, behavioral and clinical science research.

The subcommittee meetings will be open to the public for approximately one hour at the start of each meeting to discuss the general status of the program. The remaining portion of each subcommittee meeting will be closed to the public for the review, discussion, and evaluation of initial and renewal projects.

The closed portion of each meeting involves discussion, examination, reference to staff and consultant critiques of research protocols. During this portion of each subcommittee meeting, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which could significantly frustrate implementation of proposed agency action regarding such research projects.

As provided by subsection 10(d) of Public Law 92–463, as amended, closing portions of these subcommittee meetings is in accordance with 5 U.S.C., 552b(c)(6) and (9)(B). Those who plan to attend or would like to obtain a copy of minutes of the subcommittee meetings and rosters of the members of the subcommittees should contact LeRoy G. Frey, PhD, Chief, Program Review (121F), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 at (202) 254–0288.

Dated: October 24, 2007.

By direction of the Secretary:

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 07–5401 Filed 10–30–07; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Wednesday,
October 31, 2007

Part II

Department of Homeland Security

Federal Emergency Management Agency

44 CFR Parts 59, 61, 78, et al.
Flood Mitigation Grants and Hazard Mitigation Planning; Interim Rule

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Parts 59, 61, 78, 79, 80, 201, and 206

[Docket ID FEMA–2006–0010]

RIN 1660–AA36

Flood Mitigation Grants and Hazard Mitigation Planning

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Interim rule.

SUMMARY: This interim rule implements certain provisions of the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004 to provide new incentives for States and communities to mitigate the effects of flood damage to severe repetitive loss properties by creating the Severe Repetitive Loss program (SRL), and through reduced cost-share requirements in the existing Flood Mitigation Assistance program (FMA). In addition, the rule ensures that the FMA planning requirements are consistent with other applicable regulations, and streamlines the planning requirements for Indian tribal governments. It also describes requirements for the acquisition of property for open space with mitigation funds, including under SRL and FMA. Finally, this interim rule makes technical changes to clarify current practices and implements conforming amendments to reflect current authorities, including the recent change to the standard amount of authorized Hazard Mitigation Grant Program assistance.

DATES: *Effective Date:* December 3, 2007.

Comment Date: Comments on the rule including the new Paperwork Reduction Act collections are due on or before December 31, 2007.

Applicability Date: Part 78 will continue to apply to the administration of funds awarded for which the application period opened prior to December 3, 2007. Parts 79 and 80 will apply to the administration of funds awarded for which the application period opens on or after December 3, 2007, except that § 80.19 will apply as of December 3, 2007 regardless of the original project date.

ADDRESSES: You may submit comments, identified by Docket ID FEMA–2006–0010, by one of the following methods:

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

E-mail: *FEMA-RULES@dhs.gov.* Include Docket ID FEMA–2006–0010 in the subject line of the message.

Fax: 866–466–5370.

Mail/Hand Delivery/Courier: Rules Docket Clerk, Office of Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Cecelia Rosenberg, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington DC 20472, (phone) 202–646–3321, (facsimile) 202–646–2719, or (e-mail) *cecelia.rosenberg@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Request for Comments

FEMA encourages public participation in this rulemaking. Comments will be most helpful if they state a particular section (or sections) of the rule, and offer specific proposals for change, as needed. All submissions received must include the agency name and docket ID (FEMA–2006–0010). Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available on the Privacy and Use Notice link on the Administration Navigation Bar of *www.regulations.gov.*

All comments received, as well as this document are available on the public docket for this rulemaking. For access to the docket, go to the Federal eRulemaking Portal at *http://www.regulations.gov.* Submitted comments may also be inspected at FEMA, Office of Chief Counsel, Room 835, 500 C Street, SW., Washington, DC 20472.

At this time, FEMA does not anticipate it will hold a public meeting for this rulemaking project.

Table of Abbreviations

BC—Benefit Cost
BCA—Benefit Cost Analysis
CAP–SSE—Community Assistance Program–State Support Services Element
CRS—Community Rating System
DHS—Department of Homeland Security
FEMA—Federal Emergency Management Agency
FIRM—Flood Insurance Rate Map
FIS—Flood Insurance Study
FMA—Flood Mitigation Assistance
HMGP—Hazard Mitigation Grant Program
ICC—Increased Cost of Compliance
NEPA—National Environmental Policy Act of 1969
NFIA—National Flood Insurance Act of 1968
NFIF—National Flood Insurance Fund
NFIP—National Flood Insurance Program
OMB—Office of Management and Budget
PDM—Pre-disaster Mitigation
POC—Point of Contact
PRA—Paperwork Reduction Act of 1995
RFC—Repetitive Flood Claims
SHMO—State Hazard Mitigation Officer
SQA Net—Simple and Quick Access Net
SRL—Severe Repetitive Loss
USACE—United States Army Corps of Engineers

I. Background

This rule implements provisions of the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004 (the Act), Public Law 108–264, 118 Stat. 714, found at 42 U.S.C. 4102a. The Act amends the National Flood Insurance Act of 1968 to provide new programs and incentives for States and communities to mitigate flood damage to severe repetitive loss properties. Severe repetitive loss properties are residential properties covered under a contract for flood insurance that have incurred flood-related damage (i) for which 4 or more separate claims payments have been made under flood insurance coverage, with the amount of each such claim exceeding $5,000, and with the cumulative amount exceeding $20,000; or (ii) for which at least 2 separate claims payments have been made under such coverage, with the cumulative amount exceeding the value of the property. Pursuant to the Act, this interim rule implements the new Severe Repetitive Loss (SRL) program, which is authorized by the Act until September 30, 2009, and amends the existing Flood Mitigation Assistance (FMA) program to meet the requirements of the Act. In addition, FEMA is modifying the mitigation planning regulations to minimize the burden on State, local, and Indian tribal governments, to streamline the planning process, and to ensure consistency in the local planning requirements that apply to all FEMA mitigation programs, including the SRL and FMA programs.

Also, effective October 4, 2006, section 684 of the Post-Katrina Emergency Management Reform Act of 2006, Public Law 109–295, amended the amount of Hazard Mitigation Grant Program (HMGP) assistance authorized for States with an approved Standard State Mitigation Plan from 7.5 percent to 15 percent of the total estimated Federal assistance (excluding administrative costs) provided for a major disaster under FEMA Public and Individual Assistance programs for amounts spent up to $2 billion, and established a sliding scale for HMGP assistance, based on the amount of the total estimated

Federal assistance. This interim rule amends FEMA's regulations to reflect this statutory change.

II. Discussion of Interim Rule

The SRL grant program was created pursuant to Section 1361A of the National Flood Insurance Act of 1968 (NFIA, or ''the Act''), 42 U.S.C. 4030, as amended by the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004, Public Law 108–264, with the goal of reducing flood damages to SRL properties. The long-term goal of the SRL program is to reduce or eliminate claims under the NFIP through project activities that will result in the greatest savings to the NFIF in the shortest period of time.

The new program, the SRL program, is authorized through September 30, 2009 and is designed to provide mitigation assistance to address properties that have experienced repetitive flood losses and that are insured under the NFIP. The SRL program focuses on a subset of all repetitive flood loss properties: Those residential properties with a high frequency of losses or a high value of claims. The mitigation of losses sustained by these properties, through projects such as buyouts, elevation, relocation, or floodproofing, will produce savings for policyholders under the NFIP and for Federal taxpayers through reduced flood insurance losses and reduced Federal disaster assistance. The program relies on a strategy of making mitigation offers to these severe repetitive loss property owners and shifting more of the burden of recovery costs to those property owners who decline the offer of mitigation assistance, and choose to remain vulnerable to repetitive flood damage, by incrementally increasing their rates for flood insurance. As established by Congress, the sale of flood insurance under the NFIP is subject to the rules and regulations of FEMA. FEMA has elected to have State-licensed insurance companies' agents and brokers sell flood insurance to consumers. Those whose rates are increased will be eligible to appeal this increase via an independent third party from a list based on professional qualifications impartially developed by FEMA's Alternative Dispute Resolution (ADR) office. To reduce costs, the property owner may request that the Administrator substitute a reviewer from FEMA's ADR office for the independent third party.

With respect to grant programs, FEMA has actively engaged in flood mitigation through its HMGP, FMA, PDM and Repetitive Flood Claims (RFC) programs. Each of these programs was created under different legislative authorities, and as a result, have varied impacts on reducing the nation's inventory of the most floodprone structures. What has not existed is a program that specifically addresses and provides funds for the elimination of, or reduction of risk to, the subset of those properties that create the largest impact on claims paid from the NFIF. Most of these properties existed before the inception of the NFIP and its associated floodplain management standards, and are thus eligible for discounted insurance rates. Furthermore, none of these other programs feature a formal mitigation offer process whereby insurance rates may be increased if the property owner declines the offer.

FEMA intends to focus the SRL program in communities and on property owners who choose to participate in the program. This will maximize the benefits of the program, while minimizing adverse impacts on communities and property owners. The program will provide an opportunity for many property owners to address recurring flooding problems, and reduce the impact of these events.

The legislation also provides an incentive to mitigate damage to severe repetitive loss properties through reduced non-Federal cost-share requirements for the SRL and FMA programs (from 25 percent to 10 percent) for projects in States with approved State Mitigation Plans that meet the additional repetitive loss requirements. The reduced cost share would be available only for projects that address severe repetitive loss properties.

While the SRL and FMA programs will be implemented as separate programs, with different funding accounts, they are similar in their goals and purpose. FEMA has included both of these programs in one implementing regulation to ensure as much consistency as reasonable between the programs and to limit the confusion around program implementation, since both programs will likely be managed by the same State agency staff.

The final rule implementing the FMA program is published elsewhere in today's **Federal Register**. (It follows an interim rule published March 20, 1997 at 62 FR 13346.) *See* 44 CFR part 78. This part will continue to be used to implement the FMA program for all grants awarded for which the application period opened prior to December 3, 2007.

This new interim rule creates a new part (part 79, with details specific to acquisition projects at a new part 80), that restates the requirements for the existing FMA program in a format more consistent with the approach to all of FEMA's mitigation grant programs. Part 79 will implement the FMA program for all grants awarded for which the application period opens on or after December 3, 2007.

Part 79 also implements a change to the cost share available to States under the FMA program if their approved mitigation plan meets certain criteria, described herein in § 201.4. States would be eligible for a reduced cost share if their mitigation plan addresses actions related to reducing the risk to repetitive loss properties that they have already taken, and those actions that they intend to take.

The requirements for the new SRL program are incorporated into this rule. In addition, this interim rule brings the FMA program regulations into conformance with current policies, and ensures better conformance to existing grants management requirements. In authorizing the SRL program in section 102 of the Act, and amending the FMA program in section 103 of the Act, Congress directed FEMA to ''provide assistance for properties in the order that will result in the greatest amount of savings to the National Flood Insurance Fund in the shortest period of time'' and to provide assistance for activities that are ''in the best interest of the National Flood Insurance Fund.'' FEMA has concluded that Congress' stated goals for the two programs are similar. Therefore, there is no substantial difference in how FEMA will determine the funding priority for the two programs.

As an additional aspect of implementing these programs, this rule includes a new part (part 80) which describes the requirements and procedures for open space property acquisition which applies to the SRL and FMA programs, as well as all FEMA hazard mitigation assistance programs. In light of the Act's requirements regarding property acquisition, FEMA determined that a central reference point for all mitigation grant program property acquisitions would make the programs more consistent overall and easier to implement.

Elsewhere in today's **Federal Register**, FEMA published a final rule implementing section 322 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5165. (It follows an interim rule published February 26, 2002 at 67 FR 8844.) The final rule identified the requirements for State, Tribal, and local mitigation plans. This new interim rule streamlines the mitigation planning requirements contained in that rule by making the

FMA planning requirements, currently implemented in a separate part of the regulation at § 78.5, consistent with the mitigation planning requirements outlined in part 201. This will ensure that local governments can comply with one set of mitigation planning requirements in order to be eligible to apply for all FEMA mitigation project grant funding, including the FMA and SRL programs.

In addition, this interim rule streamlines the roles and responsibilities of Indian tribal governments in mitigation planning. In the preexisting regulations, Indian tribal governments were given the option of preparing either a State-level Mitigation Plan, or a Local-level Mitigation Plan, depending on whether or not they intended to apply directly to FEMA as a grantee or whether they would apply through the State as a subgrantee. FEMA has found, however, that neither of these options has sufficiently met the needs of the Indian tribal governments.

To address this problem, this interim rule establishes a specific planning requirement for Indian tribal governments that recognizes some of the unique aspects of these governments. The rule establishes Tribal Mitigation Plans for plans prepared and approved after December 3, 2007. The rule provides that plans prepared and approved under the preexisting rule, under either the State or local requirements, would also be recognized as Tribal Mitigation Plans. These older plans, however, would be required to meet the revised criteria when the original approval expires. Most Indian tribal governments fit the local planning model, in that they do not have sub-jurisdictions as States do; however, if they are grantees, the rule would require that they provide the capability assessment and identification of funding options that are listed in the State plan requirements. This rule combines the appropriate aspects of these planning requirements into one section, with a single plan required for Indian tribal governments.

This rule also implements section 106 of the Act, which modifies the insurance rates for property leased from the Federal government ''located on the river-facing side of any dike, levee, or other riverine flood control structure, or seaward of any seawall or other coastal flood control structure.'' These properties will be charged the full actuarial insurance premium rates.

Finally, this rule makes conforming amendments, as well as technical corrections to clarify current authorities and practices. This rule thus makes revisions to the amount of assistance available to States under the Hazard Mitigation Grant Program in § 79.4 as a result of changes made to the Stafford Act in the Post-Katrina Emergency Management Reform Act passed in October 2006.

III. Solicitation of Public Comments

Section 102 of the Act required FEMA, within 90 days of the Act, to consult with State and local officials in carrying out the development of procedures for the distribution of funds to States and communities to carry out eligible mitigation activities. To meet this requirement, FEMA published a **Federal Register** notice on September 15, 2004, at 69 FR 55642, to initiate consultation with State and local officials, as well as members of the public. In the notice, FEMA solicited responses to the following questions: What key factors FEMA should consider in developing the SRL program; the parameters that FEMA should use to define severe repetitive loss for multifamily structures; the process FEMA should use to notify property owners that their property is considered a severe repetitive loss property by virtue of the legislative definition; the criteria FEMA should use to allocate funds to States, including whether or not there should be caps on the funding as is the case under the FMA program; the criteria that should be used to approve State mitigation plans to take advantage of the increased Federal cost share; the criteria FEMA should use to determine projects that will result in the greatest amount of savings to the National Flood Insurance Fund (NFIF); and, what types of assistance should FEMA provide to States and communities when making offers to owners of SRL properties. Interested parties initially had until November 30, 2004, to submit written comments in response to these questions. FEMA extended the deadline for comments until December 7, 2004. FEMA received 26 written comments. Eight of those comments were received from States, ten from communities and eight were from associations. On November 17, 2004, as part of the consultation process, FEMA held a meeting in Washington DC with representative officials of State and local governments, organizations representing emergency management, floodplain management, and insurance professions, and other interested parties.

FEMA reviewed and considered all oral and written responses as FEMA developed the SRL grant program and this interim rule. FEMA's questions, the public comments, and FEMA's responses to the public comments are listed below.

Question 1: What key factors should FEMA consider in developing the Pilot Program for Severe Repetitive Loss Properties under section 1361A?

Multiple commenters stated that the program should be administered by the States, similar to existing FEMA mitigation grant programs, including FMA and Pre-Disaster Mitigation (PDM). However, once commenter wrote that the existing programs take too long to implement.

Multiple commenters stated that funding allocations should be disbursed based on the location of SRL properties (those with the greatest drain, greatest losses, most number of SRL properties, *etc.*), rather than disbursing funds evenly among States. Multiple comments indicated that the ranking of properties should ensure that those properties with the most loss claims should be addressed first. Multiple commenters stated that allocations should also consider the State and/or community capability, defined as having plans in place, past performance shown to mitigate repetitive loss properties, projects lined-up, and/or matching funds available. Multiple comments also indicated that funds should be prioritized to those communities with experience managing FEMA funds and/or with matching funds and projects lined-up. Multiple commenters indicated that reallocations should occur quickly to move funds to communities that need them.

A considerable number of commenters stated that the data used for determining those properties that meet the SRL property definition was not accurate and needed to be updated/corrected, and that real-time claim reporting was needed.

Multiple commenters stated that the parameters for demolition rebuild projects need to be clarified. Multiple commenters stated that property owners, communities, and States must be able to determine the most appropriate mitigation measures.

Multiple commenters stated that there needs to be clear definitions for ''notices'' and ''offers,'' and that both need to include clear details of the appeals process and insurance implications. Further, multiple commenters stated that there needs to be a clear description of the property value in an offer.

Multiple commenters stated that FEMA would need additional staff with National Flood Insurance Program (NFIP) expertise to manage the program.

Multiple commenters stated that the Increased Cost of Compliance (ICC) should be made available for match, or indicated that many communities would not be able to provide the cost share.

Multiple commenters indicated that the program should focus on cost effectiveness, and Benefit/Cost analysis in particular.

Multiple commenters indicated that the planning requirement should be clearly defined, and multiple commenters suggested a plan be required to prioritize funding.

Multiple commenters requested that a streamlined, simple, or tailored application and grants management process be implemented; and that guidance needs to be clear regarding the roles and responsibilities of FEMA, States and communities.

Multiple commenters stated that mitigation funds should be directed to only those covered under an NFIP policy. Multiple respondents indicated that insurance policy writers needed education and awareness/outreach, both to understand the program and the ICC benefits.

FEMA's Response

In response to comments regarding administration of the program by the States, the new Part 79 added in this rulemaking deals with the States' program administration responsibilities, which are being designed similar to the way FEMA's other mitigation grant programs operate. In response to comments regarding the accuracy of data used to identify SRL properties, insurance and claims information for properties validated as meeting the legislative characteristics of SRL are now available to States on a web-based site (SQA Net), which is updated monthly. Furthermore, regulations and program procedures clearly describe the notice, offer, and appeals processes. Program procedures have been developed to define the parameters and limitations imposed for the demolition/rebuild activity type. State, local and tribal mitigation plans will be required and are described in this interim rule; allocation of funds will be based on the number of SRL properties within each State, in accordance with the authorizing legislation; it is also described in this interim rule. Awards shall be prioritized in order of the greatest savings to the National Flood Insurance Fund, by virtue of the Benefit Cost Ratio.

With respect to concerns over the accuracy of claims data, FEMA has continually worked to update the claims information data to increase accuracy, including field verification of property information when necessary. Furthermore, property owners can discuss errors in their claim history with NFIP representatives. As described under the response to Question 3, a property owner is given a toll-free number to call if they have questions about their designation as an SRL property.

With respect to concerns regarding the details of receiving a mitigation offer, particularly for an acquisition, FEMA has developed an offer letter that will contain information regarding the mitigation project type; the amount of the purchase offer, including the basis and methodology for calculating the purchase offer, and the final offer amount that reflects applicable deductions; notification that participation in the SRL program is voluntary; the amount of time the property owner has to accept or reject the offer; the right of the property owner to appeal the increase in flood insurance rates if they refuse the offer; a summary of the consultation process, and other pertinent information.

In response to the comment that funds should only be directed to those covered under a NFIP policy, the definition of a SRL property includes the requirement that the property is covered by a NFIP policy.

ICC coverage under the Standard Flood Insurance Policy (SFIP) provides for the payment of a claim to help pay for the cost to comply with State or community floodplain management laws or ordinances from a flood event in which a building has been declared substantially damaged or repetitively damaged. When an insured building is damaged by a flood and the State or community declares the building to be substantially or repetitively damaged, ICC coverage will help pay for the cost to elevate, floodproof, demolish, or relocate the building up to a maximum benefit of $30,000. This coverage is in addition to the building coverage for the repair of actual physical damages from flood under the SFIP. ICC claims payments from previous flood events may be used to meet the non-Federal cost share requirements, as long as the period for making such a claim remains open.

Question 2: What parameters should FEMA use to define severe repetitive loss for multifamily structures consisting of 5 or more residences?

Multiple commenters stated that the multifamily properties definition should be the same as the single-family properties definition. However, several alternative options to define multifamily properties were suggested including:

- The ratio of cumulative loss versus replacement cost;
- The determination of substantial damage for a structure;
- A proportionate definition based on the number of units; or
- Five or more residences covered under a single contract for flood insurance that have had 4 or more claims, each exceeding 6.25 percent of the replacement value of the structure, with cumulative payments exceeding 25 percent of the replacement value. Parameters to consider included total damages, number of losses, dollar loss per claim, and low-rise versus high-rise structures.

Multiple commenters agreed that at least 2 claims payments that cumulatively exceed the replacement value of the structure (as stated in Section 1361A(b)(2) of the Act) should apply to single family as well as multifamily properties.

Multiple commenters indicated that multifamily properties should follow single-family properties as the priority for mitigation funding.

Multiple commenters indicated that Benefit Cost Analysis data applied to multifamily projects consider more than building damages, but also content damages, in order to make multifamily projects cost-effective.

FEMA's Response

FEMA evaluated two options in selecting the definition of ''multifamily property'' for the purposes of this interim final rule. The first option was keeping the same claims thresholds as defined in the Act for single family properties. The second option FEMA evaluated was defining ''multifamily property'' as reflecting the increased property values and number of units typically associated with multifamily properties. FEMA analyzed claim information for multifamily properties and determined that a claim history including four separate claims of $25,000 with the cumulative amount of such payments exceeding $100,000 or having at least two separate claims payments with the cumulative amount of such claims exceeding the value of the property would be reasonable criteria to select for the meaning of the term ''severe repetitive loss'' for multifamilty properties.

Based on evaluating options, FEMA determined that selecting the first option allowed properties for which a relatively inexpensive mitigation solution may be available (such as elevating HVAC equipment or eliminating finished enclosures below

elevated floors) to be eligible for SRL program funds. These minimal mitigation steps may also lead to a diminished need for disaster housing as well. This definition was chosen because it allows for the maximum number of multifamily residences to be eligible for funding consideration under the SRL program by virtue of meeting the definition of an SRL property.

Thus, ''multifamily property'' is defined in part 79 as ''a property consisting of five or more residences''. Furthermore, the definition of ''Severe Repetitive Loss'' as defined in part 79 of this interim rule uses the same parameters for multifamily properties as for single family.

Question 3: What process should FEMA use to notify property owners that their property is considered a severe repetitive loss property as defined by the statute?

A considerable number of commenters stated that notices to property owners needed to be coordinated with, sent concurrently to, or shared with State, Tribal and local communities. A considerable number of respondents stated that FEMA should be responsible for notifying property owners, and multiple commenters indicated that this notice should be in writing, either through certified or registered mail.

A considerable number of respondents stated that the notice needed to include clear, non-legal, plain English language that described the notice, the program, the determination, the process, appeals, *etc*. Multiple commenters suggested a standard form or one-page document explaining the program. Furthermore, multiple responses wrote that the notice be provided with the property owner's insurance policy renewal to link the program to insurance coverage. Multiple commenters stated that disclosure in property records, and real estate transactions needed to be enforced.

FEMA's Response

FEMA's Special Direct Facility (SDF) is operated by the NFIP's Servicing Agent. It has been in existence since 2000, when FEMA determined it needed to manage more closely the loss adjustments to the subset of repetitive loss properties that had the highest number of losses. For the same reasons, property owners whose claims history meets the SRL criteria have been receiving letters approximately 150 days before their policy is renewed that identify their properties as SRL properties. In addition to managing loss adjustments, the SDF will manage the increase in premiums should the property owner decline an offer of mitigation. The letters also explain that their flood insurance policy will be transferred to FEMA's Special Direct Facility (if the policy is not already being serviced there). These letters are also sent to the property owner's flood insurance agent, and to their mortgage lender. This letter provides a toll-free number that the property owner can call if they have questions about their designation as an SRL property, or any other questions about the transfer of their policy.

Question 4: What criteria should FEMA consider when allocating funds to States and/or communities under the Pilot Program? Should FEMA consider base allocations for States with higher numbers of severe repetitive loss properties?

Multiple commenters stated that funds should target those properties with the most losses to the NFIF, therefore targeting the most egregious properties regardless of location. A considerable number of commenters indicated that allocations should be based on the total number of SRL properties per State. Finally, multiple commenters indicated that base allocations for those States with high numbers of SRL properties should be considered.

Multiple commenters stated that any allocation should provide enough to cover the cost of at least 1 project or some acceptable number of properties, and multiple responses stated that allocations should consider variations in costs to mitigate.

Commenters wrote that additional considerations for allocation included capability factors, such as project readiness, leveraged local investment, past mitigation grant performance, NFIP compliance, and Community Rating System (CRS) ratings. Multiple commenters suggested FEMA base allocations on approved mitigation plans.

Commenters suggested several alternative bases for allocations, including: Insured values or market values, or values based on value of future losses.

FEMA's Response

Subpart 79.4 of this interim rule provides for allocations to be based upon the percentage of the total number of SRL properties located within each State, as per the authorizing legislation, Flood Insurance Reform Act of 2004, Public Law 108–264. States with little or no allocation will be able to apply for 10 percent of the total funds appropriated in any fiscal year, provided that the State or Tribal applicant has at least 1 SRL property. State allocations will be large enough to permit the implementation of at least 1 project.

FEMA considered several options in evaluating how to administer allocations based on the percentage of the total number of SRL properties located within each State, as per the authorizing legislation, Flood Insurance Reform Act of 2004, Public Law 108–264. States with little or no funding allocation will be able to apply for 10 percent of the total funds made available under SRL in any fiscal year, provided that the State or Tribal applicant has at least one SRL property. The options evaluated and not accepted included small allocations to all States; larger allocations to a limited number of States with numerous SRL properties; and a variety of allocation scenarios for States with a limited number of SRL properties.

Ultimately FEMA decided on an allocation that could be adjusted annually based on the number of SRL properties in a particular State. FEMA would evaluate the point at which it is more beneficial for a State to compete for the 10 percent set-aside than to receive an allocation that was insufficient. This allocation approach provided the necessary funds to accomplish mitigation projects. The average flood mitigation project funded under FEMA's mitigation programs is approximately $70,000–$100,000.

The legislation also required a 10 percent set-aside of the grant funds for States receiving little or no allocation. FEMA determined that ''little or no allocation'' meant the point at which it was more beneficial for a State to compete for appropriate funds to accomplish mitigation activities than to receive a small allocation, or one which is below the $70,000-$100,000 average mitigation project cost. The allocation option that FEMA selected is a reasonable approach to both allocations and the 10 percent set-aside.

Question 5: Should there be caps on Pilot Program funding for States and communities similar to Flood Mitigation Assistance program funds? If so, how would the cap amounts be determined?

The overwhelming response was there should be no caps on funding.

Multiple commenters requested FEMA remove the caps on funding currently implemented under the FMA program as well.

FEMA's Response

At the commenters' request, FEMA has not imposed any funding caps within the SRL program. FMA caps are not changed by this rule, since they are statutorily based.

Question 6: What criteria should FEMA use to review and approve State mitigation plans consistent with 44 CFR part 201 to ensure that they contain recommended actions to mitigate severe repetitive loss properties?

Multiple commenters indicated that FEMA should be as flexible as possible in the criteria used to review and approve plans, including simple goals and strategies that acknowledge properties at risk.

Multiple commenters indicated that mitigation is local, and therefore States should not be held accountable for local strategies. Multiple commenters suggested that existing State or local plans should be accepted, particularly given the limited timeframe of authority for the Pilot program.

Suggestions, if a plan is required, included providing for amendments to existing plans and approving projects while the amendments are being reviewed. Multiple commenters suggested that criteria to be reviewed focus on capability factors such as plan implementation, past performance and effort, not the number of severe repetitive loss properties mitigated. Multiple commenters were concerned that the lack of accuracy in the repetitive loss database may affect their ability to meet the planning requirements related to severe repetitive loss property mitigation. Discrepancies in claims information and property values as shown in the repetitive loss database may result in not showing certain properties as being SRL properties, yet those properties may in fact have been mitigated, ''counting'' towards a SRL property mitigated. Similarly, database discrepancies may show a property as being SRL, when in fact it may not be. Therefore, if the property has not been mitigated, it may count ''against'' the state's efforts to indicate mitigation of SRL properties in their state plan.

Several commenters stated that disclosure of offer and insurance information needed to be a part of the property's permanent record, and information needs to be conveyed to the existing and new homeowners regarding the mitigation offer. Finally, multiple commenters indicated that there were too many ''lists'' between repetitive loss and severe repetitive loss.

FEMA's Response

In this interim rule, FEMA requires states to have an approved State Mitigation Plan meeting the requirements of §§ 201.4 or 201.5 to qualify for the reduced non-federal cost share. The plan must satisfy all standard requirements but also identify specific actions the state has taken to reduce the number of repetitive loss properties; specify how the state intends to reduce the number of such properties; and describe the state's strategy to ensure that local jurisdictions with SRL properties take actions to reduce the number of these properties, including the development of local mitigation plans. Amendments to currently approved State plans will be acceptable. However, at the time of the next required plan update, the amendment must be incorporated into the plan and adopted as part of the plan. Until such time as the amendment is approved by FEMA, grants could be awarded; but the lower non-Federal cost share would not be available until the amendment is approved. While State and local plans must contain different types of data, the two types of planning efforts must be linked via common mitigation goals and objectives.

With respect to the number of repetitive loss lists, FEMA has made available a separate list of SRL properties on SQA Net, which is available to State NFIP Coordinators and State Hazard Mitigation Officers via FEMA Regional Offices. SQA Net is a secure web portal that enables access of data from the NFIP flood insurance database. Data is updated monthly. In pursuing a repetitive loss strategy, FEMA developed a definition of repetitive loss structures, and maintained a list of those structures. A target repetitive loss list was also developed, which consisted of a subset of the list of repetitive loss properties that had the highest number of losses. FEMA does not consider these lists to be excessive, and finds that each serves a valuable purpose.

Question 7: What criteria should FEMA use to make the determination that a State has taken actions to reduce the number of severe repetitive loss properties in its communities?

Commenters characterized criteria in terms of qualitative and quantitative criteria, as well as procedures for developing and reviewing plans.

Qualitative factors suggested include the effort (that is, the number of offers made or the most egregious properties approached, but not necessarily accepted or mitigated); documentation that any actions were taken; partnerships with other programs and funding sources; level of outreach; and strength of the Community Assistance Program-State Support Services Element (CAP–SSSE). This program provides funding to States to provide technical assistance to communities in the National Flood Insurance Program (NFIP) and to evaluate community performance in implementing NFIP floodplain management activities. Quantitative factors proposed include number of properties mitigated, higher regulatory standards, number of Community Rating System (CRS) communities, number of repetitive loss properties, other programs in place, a plan in place, prioritization of properties, leveraging of matching funds, and others.

Multiple commenters stated that States with approved mitigation plans in place should not have to submit new plans or ''prove'' that actions have been taken. Conversely, multiple commenters suggested that States submit a report or other documentation each year to show actions taken.

FEMA's Response

Section § 201.5(c)(3)(v) of this interim rule addresses the State mitigation planning requirements for meeting this provision. The regulation requires documentation of actions already taken that specifically focused on SRL properties. Because the mitigation measures for each State and community could vary widely depending on the factual circumstances of each state and community, FEMA opted not to set fixed criteria.

With respect to submitting plans and updates, since most States already have approved mitigation plans, they may only need to make limited revisions or clarifications to the plan that focus on this subset of properties. The entire plan will not need to be resubmitted, only the amendment that pertains to the SRL mitigation actions. Finally, at a minimum, states are required to review and update their mitigation plans every 3 years. Although they may opt to submit revisions annually, showing the mitigation actions taken, FEMA believed an annual requirement to be overly burdensome.

Question 8: What criteria should FEMA use to determine projects that will result in the greatest amount of savings to the National Flood Insurance Fund? How should the criteria relate to current FEMA procedures for determining cost effectiveness?

A considerable number of commenters stated that Benefit Cost

Analysis (BCA) should be used to determine the greatest amount of savings to the NFIF. Multiple commenters indicated that the benefit cost analysis should be waived for all SRL properties or for those with 2 or more claims that cumulatively exceed the property value. Additional suggestions for the use of benefit cost methodologies included providing clear guidance, a request that it be simple to use, and that it allow FEMA and applicants to consider all factors, not just damages. Commenters provided alternative criteria for ranking properties such as: claims paid; claims relative to property values; greatest cost savings to insured properties mitigated; or cost effectiveness based on insurance premium costs.

Multiple commenters expressed that the term ''property value'' needed to be defined clearly, whether based on appraisal value, replacements value, insured value, or fair market value.

FEMA's Response

All projects for which FEMA provides funding must be cost effective. For the purpose of determining the amount of savings to the NFIF as a result of the project, FEMA agreed with the commenters and used a Benefit Cost Ratio. In this rule, FEMA determines an SRL property by the cumulative amount of claims when 4 or more claims have been made, or by the market value of the property in relation to the cumulative amount of two or more claims when that cumulative amount exceeds the market value (§ 79.2(g)).

Instead of using the term ''property value'', FEMA used the term ''market value'' and defined it in § 79.2. FEMA defined market value as the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the property would have sold on the effective date of the valuation, after a reasonable exposure time on the open market, from a willing and reasonably knowledgeable seller to a willing and reasonably knowledgeable buyer, with neither acting under any compulsion to buy or sell, giving due consideration to all available economic uses of the property at the time of the valuation.

Question 9: What types of assistance do States and communities want from FEMA when making offers to owners of severe repetitive loss properties?

Multiple commenters asked for funding for States and communities to assist with administrative costs, technical assistance needs, staff, and application development as part of making offers to owners of SRL properties. State and community commenters also stated that legal assistance prior to initiating offers and negotiating with owners would assist them.

A considerable number of commenters stated that the data supporting the SRL properties list needed to be updated for accuracy, including validating the data for addresses, names, claims history, and property values. In addition, commenters requested access to the database, SQA Net, flexibility to add structures or validate data, and verifying premiums. Commenters also suggested FEMA maintain a single national database for projects, and provide information on the true actuarial rate in case of refusal at the time of the offer.

Multiple commenters stated that adequate number of FEMA staff needed to be available to manage the program, and that the staff needs to be trained in NFIP and FEMA mitigation programs.

Multiple commenters stated that assistance was needed to notify property owners of the consequences of not accepting offers. The commenters also stated that a simple FEMA handout or document explaining the insurance repercussions and the appeals process would be extremely helpful. Multiple commenters also requested FEMA describe the tax implications of accepting mitigation funds.

Multiple commenters requested training be made available or improved for the program, and specifically identified insurance agents as a target for training.

FEMA's Response

As with our other grant programs, administrative costs are available to applicants and subapplicants as a percentage of the grant award, once the grant is awarded. Furthermore, applicants and subapplicants may be reimbursed for pre-award costs for activities directly related to the development of the project proposal. These costs can only have been incurred during the open application period. These criteria are detailed in § 79.8 of this interim rule.

Certain legal expenses may be considered eligible applicant and/or subapplicant management cost activities when associated with: solicitation, review and processing of the SRL subapplications and subgrant awards, obtaining pre-award consultation agreements from SRL property owners, and staff salary costs directly related to performing the activities above. All management cost activities must be in conformance with 44 CFR part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments and applicable program guidance.

Applicant management costs are limited to up to 10 percent of the grant award and subapplicant management costs are limited to up to 5 percent of the grant award. Eligible management costs incurred prior to the grant award, but after the SRL application period has opened are identified as pre-award management costs. Costs incurred with respect to pre-award activities associated with project implementation are not eligible.

Data on SRL properties is available on the SQA Net to State NFIP Coordinators and State Hazard Mitigation Officers. This data is being validated and updated continuously. Over one third of the properties identified as having a data anomaly have been validated. New information is published each month on SQA Net. Information on the insurance premium rate increases for property owners refusing the mitigation offer will be provided during the consultation. Project-related data for the SRL program will be housed within the same database that is maintained for all other Pre-Disaster Mitigation (PDM) grant programs.

Only FEMA Regional and disaster related staff as well as State personnel, have been granted access to the repetitive loss and SRL data available to SQA Net. Several new features have been added to SQA Net recently including the ability to submit requested updates to repetitive loss records electronically over the Internet. The ability to search for claims records and to view former and active policy records via SQA Net is expected to be in place by Spring 2008. With respect to allowing local government access to SQA Net, there are concerns regarding potential security issues and the increased possibility of the unintentional inappropriate release of the data at the local level resulting in a Privacy Act violation. Although they do not have access to the SQA Net system, local communities continue to be approved users of the repetitive loss data under the Privacy Act.

Program implementation information will contain information on premium rate increases, if a property owner refuses the mitigation offer. This program information also contains checklists of the types of information that the State or community would need to compile and make available as part of the consultations. The program information will be augmented further with mitigation consultation tools and resources for States and communities to aid in the consultation and offer process.

Tax implications of accepting mitigation offers must be answered by the property owner's tax advisor or other State or locally sponsored tax advisory service. FEMA does not have the authority to provide information on this issue.

Section 207 of the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004 calls for the establishment of minimum training and education requirements for insurance agents who sell flood insurance policies. FEMA is working with state insurance commissioners on training requirements for agents that sell flood insurance policies.

Question 10: What role should states and communities have in the appeals process for severe repetitive loss property owners who decline mitigation offers under the Pilot Program? What rules and procedures should be contained in the Appeals Process?

Of the comments received, 19 entities offered comments on question 10. A general synopsis of these comments is as follows:

General comments on appeals process	States/ territories	Local communities	Associations/ organizations
Advocate information sharing between FEMA and States	1	3	4
Advocate State and/or community involvement in Appeals Process	5	4	1
Advocate that only FEMA be involved in Appeals Process		1	
State participants still discussing the issue with other State agencies	1		

The following are the comments on the appeals requirement of the Pilot Program presented by State and local officials and representative organizations during the consultation:

- Clarity in the details, especially the Appeals Process and the insurance consequences.
- States and communities are also sensitive to any possibility of liability which may preclude much participation in the Appeals Process. However, States and communities may be willing to participate in an administrative capacity in collecting data for appeals and ensuring that applications are completed.
- Property owners should make an appeal in writing, along with supporting documentation. The jurisdiction can also file documentation either in support or against the property owner's reason for the appeal.
- The decision to accept or deny the appeal must come from FEMA, thereby removing the States and communities from the threat of legal action. FEMA should send written notice of its findings to the state, community and property owner.
- Appeals rule requirements should not be written in a way that allows the property owners to easily avoid mitigation activities or higher flood insurance premiums.
- States and communities should be an informational role; again, concern to keep the States and communities from the potential legal liabilities.
- The local communities and the State officials should just assist people with the appeals. FEMA should make all your final decisions and handle all the paperwork. We also feel that there should be some formal recommendation from your parishes or local communities or State.
- The appeal process should start with the community. If the owner of a property rejects an offer but can easily show that in purchasing, that he relied on a FIRM [Flood Insurance Rate Map] map that indicated the property was not on the mapped flood hazard area, this should not have to go to FEMA.
- The appeal should go through the local government. They are the ones with claims on the property; they could validate it. Should come through the state as the administrator of the program. We could validate it; just like with an appeal from the local government, you concur, you may not concur, no comment, but that provides the additional insight.

FEMA's Response

As established in § 78.7(d) of this rule, an appeal on increased insurance rates is made in writing by the property owner to the FEMA Regional Administrator within 90 days of the date of the notice of insurance increase. The Regional Administrator may request the Grantee, and Sub-grantee (State and community) if applicable, to assist in the collection of data to support the property owner's appeal. The Regional Administrator will review the information provided by the property owner and may participate in discussions with the property owner, and if applicable, with the Grantee and Sub-grantee to resolve the appeal prior to sending it to an Independent Third Party or a reviewer from FEMA's Alternative Dispute Resolution office (at the property owner's discretion).

IV. Regulatory Requirements

A. Administrative Procedure Act Statement

In general, FEMA publishes a rule for public comment before issuing a final rule, under the Administrative Procedure Act, 5 U.S.C. 533 and 44 CFR 1.12. The Administrative Procedure Act, however, provides an exception from that general rule where the agency for good cause finds that the procedures for prior comment and response are impracticable, unnecessary, or contrary to public interest.

This interim rule implements provisions of the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004, which amended the National Flood Insurance Act of 1968. The key component of this rule includes implementation of the new SRL program as well as amending provisions of the existing FMA program. The rule also streamlines the planning process, and clarifies the planning requirements to address existing, unanticipated inconsistencies.

Authorization for the SRL program expires on September 30, 2009. Funding for the new SRL program was made available as of fiscal year 2006, thus it is important to allow States, tribes, communities, and property owners to access these funds so that they may have the opportunity to reduce their flood losses to these high risk properties as soon as possible. It is also in the public interest to mitigate these SRL properties as soon as possible to minimize further costs resulting from upcoming seasonal flooding. These properties often pose the highest costs to the Nation in terms of discounted Federal flood insurance rates, as well as Federal disaster assistance payments,

Prior comment on this rule is not in the public interest where the implementation of the new SRL program, as well as the modified FMA program, will assist States recovering from flood disasters nationwide, including Hurricanes Katrina and Rita, by providing additional grant resources

and increasing the Federal cost share for projects mitigating SRL properties. In particular, States and communities are at a critical stage for identifying properties to be mitigated in the post-Katrina recovery efforts, and these funds are essential for targeting the most costly properties in the area. To be most effective, the funds need to be made available to the Gulf Coast States and communities affected by Katrina and Rita as soon as possible. At the end of August 2007, there were just under 8,100 properties identified as meeting the definition of severe repetitive loss properties; approximately 58 percent, or 4,685 properties, lie within the 5 States most affected by Hurricanes Katrina and Rita. Mitigating these SRL properties will provide States the opportunity to reduce future losses to these SRL properties, which represent the largest drain on the NFIF and also will reduce future disaster costs to the local, State, and Federal government.

States, tribes, and communities also have a strong interest in accessing, as soon as possible, information in the rule that outlines how the States can revise their mitigation plans to receive the reduced cost share under the FMA and SRL programs. This cost-share reduction is an important incentive and, in some cases, necessary to allow communities, which otherwise would not be able to meet the match requirement, to mitigate SRL properties. It is essential that the availability of this information not be delayed, particularly where in many cases the revisions to mitigation plans will themselves, require time-consuming coordination across multiple agencies.

In accordance with the Administrative Procedure Act, 5 U.S.C. 553 (b), FEMA believes that prior notice and comment would be contrary to the public interest, as it would serve only to delay the benefits of this rule to States, tribes, and communities, and would continue imposing the costs of these at-risk properties on the general public.

FEMA nevertheless recognizes the importance of public input in the regulatory process. To that end, FEMA involved the public in a consultation process prior to the publication of this interim rule. To initiate the consultation process, FEMA published a **Federal Register** notice on September 15, 2004, 69 FR 55642. The comment period was supposed to close on November 30, 2004, but FEMA extended the deadline for comments until December 7, 2004, and received 26 written comments from States, communities, and associations. Also, as part of the consultation, FEMA invited representative officials of State and local governments, organizations representing emergency management, floodplain management, and insurance professions, to provide oral presentations on the requirements and issues raised in the **Federal Register** notice. Comments received were given careful consideration in the preparation of this interim rule.

Finally, FEMA actively encourages and solicits comments on this interim rule from interested parties. These comments will be given careful consideration, and could result in changes to these regulations.

B. National Environmental Policy Act

FEMA has considered this rule in accordance with its implementing regulations for complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), which are found at 44 CFR part 10. This rule addresses applicant planning requirements, as well as eligibility, funding increases, and cost sharing/funding incentives relating to certain disaster mitigation programs and does not change the type or nature of mitigation actions that may be funded. This rulemaking would neither individually nor cumulatively have a significant effect on the human environment and, therefore, neither an environmental assessment nor an environmental impact statement is required. This rulemaking is among the category of actions included in the Categorical Exclusions listed at 44 CFR 10.8(d)(2)(ii), which excludes the preparation, revision and adoption of regulations from the preparation of an environmental assessment or environmental impact statement, where the rule relates to actions that qualify for categorical exclusions. The related actions of the development of plans and administrative activities that are included in this rule are also categorically excluded under 44 CFR 10.8(d)(2)(iii) and 44 CFR 10.8(d)(2)(i).

C. Executive Order 11988, Floodplain Management

FEMA has prepared and reviewed this rule under the provisions of Executive Order 11988, Floodplain Management. Part 9 sets forth FEMA's policy, procedures, and responsibilities in implementing this Executive Order. In summary, these are, to the greatest possible degree: To avoid long and short term adverse impacts associated with the occupancy and modification of floodplains; avoid direct and indirect support of floodplain development whenever there is a practical alternative; reduce the risk of flood loss; promote the use of nonstructural flood protection methods to reduce the risk of flood loss; minimize the impacts of floods on human health, safety and welfare; restore and preserve the natural and beneficial values served by floodplains; and adhere to the objectives of the Unified National Program for Floodplain Management. As stated in the rule, the purpose of the SRL and FMA programs is to mitigate insured property losses from floods, thereby minimizing impacts to the NFIF, which is consistent with the intent of the Executive Order. In addition, for project activities funded through the SRL and FMA programs, each project will go through the environmental review process, which will include compliance with Executive Order 11988.

D. Executive Order 12866, Regulatory Planning and Review

FEMA has prepared and reviewed this rule under the provisions of Executive Order 12866, Regulatory Planning and Review. Under Executive Order 12866, a significant regulatory action is subject to the Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Regulatory Alternatives

In determining how to move forward with this rule, two alternatives were considered. The first alternative was to issue an interim rule for the SRL program, and to modify the existing separate FMA rule to incorporate changes made by the Act. This would result in two sections of the CFR addressing mitigation grant programs funded through the NFIP which could result in disjointed implementation of the two similar programs.

The second alternative (and the one adopted by FEMA) was to establish and proceed with the implementation of the SRL and FMA programs as described in

this interim rule. This will allow FEMA to ensure a more consistent approach to implementation and management of these programs. FEMA has been working to implement all of the mitigation grant programs in a consistent manner, and this regulatory change furthers that attempt. These changes are also expected to limit confusion around program implementation since both programs will likely be managed by the same state agency staff.

Congressional Appropriations

The regulations implementing the FMA program were originally issued on March 20, 1997. Historically, the program has provided $20 million in grants on an annual basis to States and communities to reduce flood losses to properties insured under the NFIP. In fiscal year 2007, $31 million was made available for the FMA program to fund activities that help reduce repetitive flood insurance claims, thereby reducing the drain on the NFIP from these properties. This program provides an opportunity for every State to fund planning and project activities but, since it is a small program, it is unable to assist all those who could benefit from it. The Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004 provides for additional program funding for the FMA program, as well as makes it easier for some to participate in the program, by providing the ability for States to reduce the cost share for those properties that meet the definition of a severe repetitive loss property.

The primary purpose of this rule is to implement the new SRL program, which will provide grants to property owners to mitigate their risk from flooding, with incremental increases in the insurance premiums imposed if they decline to accept the offers of mitigation. In fiscal year 2007, $40 million was made available by Congress for the SRL program. Therefore, in fiscal year 2007, a total of $71 million was allocated for these programs ($31 million for FMA and $40 million for SRL).

Impact From Increase in Insurance Premiums

Most severe repetitive loss properties were built prior to December 31, 1974, and the insurance premiums for these properties are supported financially by other NFIP policyholders. Repetitive loss properties only account for approximately 1 percent of the current NFIP policies, yet these properties historically account for over 30 percent of the amount paid in claims. Under the SRL program, owners of severe repetitive loss properties will receive mitigation offers. Refusals of these offers will result in increased premiums for owners of these properties. Thus, in either case, this rule should help shift the disproportionate burden away from the majority of NFIP policyholders who do not own SRL properties.

Within the NFIP, the average discounted premium paid by owners of property built before December 31, 1974 is $800 per year. However, if those properties were rated on an actuarial basis, taking into account their actual flood risk, the annual premiums they should be paying would average between $1,700 and $1,900 per year. Severe repetitive loss properties as a subset of the pre-1974 properties have higher flood risks than most properties with discounted premiums insured under the NFIP, and their actuarial rates could be much higher. For purposes of estimating the annual economic impact of this interim rule, FEMA used an average actuarial premium rate of $5,000 for these severe repetitive loss properties. This average actuarial rate does not reflect the discount premium rate; rather it more closely represents the flood risk to the property.

Of the $40 million available each year for the SRL program, FEMA assumes that $37 million will be awarded as project grants, and that the average grant per property is $75,000. Therefore, offers will be made to approximately 500 property owners in the first year. It is assumed that up to 3 percent of those property owners might decline the offer of mitigation assistance, and that these 15 properties would be subject to the increased insurance premiums. This 3 percent figure is based on the fact that although NFIP engages in litigation for less than 1 percent of its claims in an average claims year, there have been 3 times the normal number of claims as a result of Hurricanes Katrina, Rita, and Wilma. Also, after the wildfires of Cerro Grande, FEMA instituted a similar grant program whereby homeowners received funds for repair, with an appeals provision. Approximately 3 percent of those homeowners appealed their grant amount.

This increased cost of insurance for these 15 properties would result in an average discounted premium increase of approximately $400 per property owner (50% of the $800 average discounted premium), for a total increase in insurance premiums of $6,000 the first year. This premium rate can increase over time, until the actuarial rate (averaged, for the purpose of this rule to $5,000) is reached. At no time, however, would the premium paid for the affected property exceed the actuarial rate. If, over the remaining 1 year of the pilot SRL program, one expects the number of property owners declining the offer of assistance to remain the same, then the total number of affected properties will be 30. Within 10 to 20 years, when all 30 of the affected properties whose owners declined the mitigation offer will each pay actuarial premium rates described above as averaging $5,000 per year, the maximum annual impact of the program would be $150,000 ($5000 × 30).

Changes to HMGP

The rulemaking makes a technical change to reflect existing HMGP post-disaster allocation amounts already in effect as a result of amendments to Section 404 of the Stafford Act (42 U.S.C. 5170c, as amended by Pub. L. 109–295, § 684). The change set non-discretionary standard allocation amounts for the program.

Open Space

As part of implementing the SRL and FMA, this rule also includes a new part (part 80) which describes the requirements and procedures for open space acquisition which will apply to these programs, as well as all FEMA mitigation grant programs. The Act requires certain special acquisition procedures for SRL, however open space acquisitions funded under all FEMA mitigation grant programs otherwise subject to the same requirements to ensure mitigation objectives are met. Prior to this rule, acquisition requirements for each mitigation grant program were addressed in the respective mitigation grant program regulations or guidance, such as at § 78.12 for FMA and § 206.434 for HMGP, including associated program guidance. A central reference point for all mitigation grant program property acquisitions is intended to make the programs easier to implement. There will be no additional cost from this change.

Increase in Federal Share

The rule also implements the changes to the FMA program by allowing for a 90 percent Federal share for the mitigation of severe repetitive loss properties, amending the method by which State funding allocations are calculated, and making the FMA planning requirements and other program aspects consistent with other FEMA mitigation planning and program requirements. Though there is no net change in the funding allocated for FMA with this new cost share provision, the distribution of the funding will shift to the Federal ''side''. In FY 2007, $31

million was made available for the FMA program. Since the change in Federal share will be from 75 percent to 90 percent, the change in Federal outlay will be $4.65 million. This figure includes two very conservative assumptions: That all properties mitigated under FMA will be SRL properties; and that all States will seek this new cost share by virtue of revising their State mitigation plans.

Intangible Benefit

As of the end of August 2007, just under 8,100 properties were identified as meeting the definition of severe repetitive loss. Of those, approximately 58 percent are in the 5 States most affected by hurricanes Katrina and Rita. Alabama has 223 properties, Louisiana has 2,567 properties, Mississippi has 148 properties, Texas has 1,275 properties, and Florida has 472 properties. Implementation of the new SRL program, as well as the modified FMA program, will assist these States in recovering from these disasters by providing additional grant resources and the ability to increase the Federal cost share for projects mitigating SRL properties.

The economic impact of this rule is approximately $76 million. This rulemaking has been determined to be a nonsignificant regulatory action under section 3(f) of Executive Order 12866 by OMB. This rule adheres to the principles of regulation of the Executive Order.

E. Executive Order 12898, Environmental Justice

Under Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994, FEMA incorporates environmental justice into our policies and programs. The Executive Order requires each Federal agency to conduct its programs, policies, and activities that substantially affect human health or the environment, in a manner that ensures that those programs, policies, and activities do not have the effect of excluding persons from participation in our programs, denying persons the benefits of our programs, or subjecting persons to discrimination because of their race, color, or national origin.

No action that FEMA can anticipate under the interim rule will have a disproportionately high or adverse human health and environmental effect on any segment of the population. This rule implements the SRL program, providing mitigation grants to severe repetitive loss properties, and modifies aspects of the FMA program and the mitigation planning requirements. With respect to Indian tribal governments, the rule streamlines and simplifies the planning requirements. Finally, this interim rule amends § 206.432 to reflect statutory and technical changes to HMGP. Accordingly, the requirements of Executive Order 12898 do not apply to this interim rule.

F. Paperwork Reduction Act of 1995

This interim rule includes provisions constituting collections of information under the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*). Under section 3507(d) of the PRA, The Federal Emergency Management Agency (FEMA) will submit a copy of this rulemaking action to the Office of Management and Budget (OMB) for review. FEMA is submitting a request for review and approval of collections of information under OMB's emergency processing procedures. Through publication of this interim rule, FEMA is requesting a 6-month approval for these information collections. FEMA plans to follow this emergency approval request with a 3-year approval request. The 3-year request will be processed under OMB's normal clearance procedures in accordance with the provisions of OMB regulation at 5 CFR 1320.10. This interim rule also serves as the 60 day notice required by 5 CFR 1320.8. FEMA invites the public to comment on the proposed collections of information during this 60 day comment period.

Several collections of information referenced in this interim rule have existing OMB approvals under the PRA. The rule in §§ 79.3(b), 79.3(c), 79.3(d), 79.5(a)(2), 79.5(b), 79.6(b), 79.7(b), 79.9(a), 201.3, 201.6, and 201.7 contains collections of information under the PRA for which FEMA requests approval of amendments to existing collections by OMB. In addition, FEMA is requesting approval of two new collections of information for the interim rule contained under the new §§ 79.7(d), 80.13(a), 80.13(b), 80.17(e), 80.19(b), 80.19(d), 80.19(e), 80.21, and 206.434.

1. Collection of Information

Part 201 under OMB Number 1660–0062, State/Local/Tribal Hazard Mitigation Plans—under section 322 of Stafford Act clarifies the State, Tribal, and local mitigation planning requirements. Before this interim rule goes into effect, applicants for FMA funds are required to develop a plan that specifically addresses flood mitigation planning requirements under part 78. This plan is collected under OMB collection number 1660–0075; Flood Mitigation Assistance—Flood Mitigation Plan. Applicants for all other types of mitigation grant funding are required to develop a plan that addresses all hazards for which the applicant seeks funds under part 201, which may also include floods. This plan is collected under OMB collection number 1660–0062; State/Local/Tribal Hazard Mitigation Plans—under section 322 of Stafford Act. With the revisions established by this interim rule, the all hazards plan developed under part 201 will meet the requirements for all mitigation grants including FMA, which means that applicants will no longer be required to submit the flood specific plans under part 78. Because of this change FEMA is discontinuing OMB collection number 1660–0075, and revising OMB collection number 1660–0062.

Due to this change in the mitigation grant process, there are outstanding flood mitigation grants that have been issued with the requirement that the grantee submit a flood mitigation plan pursuant to the requirements of part 78. Although FEMA will no longer require the submission of flood mitigation plans for those funds awarded during application periods that open on or after the effective date of this rule, FEMA will continue to accept flood mitigation plans until the end of a grantee's current period of performance to include any extensions granted pursuant to § 78.9 and FEMA's Financial and Acquisition Management Division's Extension Policy.

Title: State/Local/Tribal Hazard Mitigation Plans-Section 322 of the Disaster Mitigation Act of 2000.

OMB Number: 1660–0062.

Abstract: The purpose of the State/Local/Tribal Hazard Mitigation Plan requirements is to outline the strategy by which State, tribal and local governments use to demonstrate the goals, priorities, and commitment to reduce risks from natural hazards and serves as a guide for State and local decision makers as they commit resources to reducing the effects of natural hazards.

Affected Public: State, Local or Tribal Government.

Number of Respondents: 56.

Estimated Time per Respondent: 2,408.

Estimated Total Annual Burden Hours: 768,320.

Frequency of Response: On Occasion.

The authorized SRL grant program will be implemented under the new part 79. However, the administration of FMA funds for which application period opens prior to publication of this rule will be subject to part 78, while the new

part 79 is used to administer new FMA grants.

2. Collection of Information

The SRL grant program was authorized by Congress in 2004 and expires on September 30, 2009. The SRL grant program focuses on a subset of all repetitive flood loss properties, residential properties with a high frequency of losses or a high value of claims, defined as severe repetitive loss properties. This is a non-disaster grant program that is authorized annually and not as a result of a Presidential Disaster Declaration. The information collection activity under the approved OMB information collection 1660–0025, FEMA Grant Administrative Forms is a paper-based collection used by States and local government to obtain grant information and is being amended to include the following burden hours for the SRL grant program.

Title: FEMA Grant Administration Forms.

OMB Number: 1660–0025.

Abstract: This collection of information focuses on the standardization and consistent use of standard and FEMA forms associated with grantees request for disaster and non-disaster federal assistance, submission of financial and administrative reporting and recordkeeping. The use of the forms will minimize burden on the respondents and enable FEMA to continue to improve in its grants administration practices.

Affected Public: State, Local or Tribal Government.

Estimated Total Annual Burden Hours:

DISASTER PROGRAMS

Data collections activity/instruments	Number of respondents (A)	Frequency of responses (B)	Hour burden per response (C)	Annual responses (D) = (A × B)	Total annual burden hours (C × D)
PA:					
SF 424	56	1	45 minutes	56	42 hours.
FF 20–20	56	1	9.7 hours	56	543 hours.
FF 20–16, A, B, C	56	1	1.7 hours	56	95 hours.
FF 20–10	56	4	1 hour	224	224 hours.
SF–LLL	56	1	10 minutes	56	9 hours.
Subtotal	56		13.3 hours	392	57 Disaster Declarations × 913 hours = 52,041.
SCC:					
SF 424	17	1	45 minutes	17	13 hours.
SF 20–20	17	1	9.7 hours	17	165 hours.
FF 20–16, A, B, C	17	1	1.7 hours	17	29 hours.
FF 20–10 (SF 269)	17	4	1 hour	68	68 hours.
SF–LLL	17	1	10 minutes	17	3 hours.
Subtotal	17		13.3 hours	119	57 Disaster Declarations × 278 hours = 15,846.
ONA:					
SF 424	40	1	45 minutes	40	30 hours.
FF 20–20	40	1	9.7 hours	40	388 hours.
FF 20–16, A, B, C	40	1	1.7 hours	40	68 hours.
FF 20–10	40	4	1 hour	160	160 hours.
SF–LLL	40	1	10 minutes	40	7 hours.
Subtotal	40		13.3 hours	320	57 Disaster Declarations × 653 hours = 37,221.
HMGP:					
SF 424	52	1	45 minutes	52	39 hours.
FF 20–20	52	15	9.7 hours	780	7,566. hours.
FF 20–16, A, B, C	52	1	1.7 hours	52	88 hours.
FF 20–10	52	4	1 hour	208	208 hours.
FF 20–17	52	15	17.2 hours	780	13,416 hours.
FF 20–18	52	6	4.2 hours	312	1,310 hours.
FF 20–19	52	6	5 minutes	312	25 hours.
SF–LLL	52	1	10 minutes	52	9 hours.
Subtotal	52		35 hours	2,548	57 Disaster Declarations × 22,661 hours = 1,291,677.
FMAGP:					
SF 424	12	4	45 minutes	48	36 hours.
FF 20–20	36	4	9.7 hours	144	1,397 hours.
FF 20–16, A, B, C	36	4	1.7 hours	144	245 hours.

DISASTER PROGRAMS—Continued

Data collections activity/instruments	Number of respondents (A)	Frequency of responses (B)	Hour burden per response (C)	Annual responses (D) = (A × B)	Total annual burden hours (C × D)
FF 20–15	36	4	17.2 hours	144	2,477 hours.
FF 20–10	12	4	1 hour	48	48 hours.
FF 20–18	36	4	4.2 hours	144	605 hours.
FF 20–19	36	4	5 minutes	144	12 hours.
SF–LLL	36	4	10 minutes	144	24 hours.
Subtotal	36		35 hours	960	94 Disaster Declarations × 4,844 hours = 455,336.
Disaster Grants Total	56		110 hours	3,800	1,852,121 hours.

NON-DISASTER PROGRAMS

Data collection activity/instruments	Number of respondents (A)	Frequency of responses (B)	Hour burden per response (C)	Annual responses (D) = (A × B)	Total burden hours (C × D)
US&R:					
SF 424	28	1	45 minutes	28	21 hours.
FF 20–20	28	1	9.7 hours	28	272 hours.
FF 20–16, A, B, C	28	1	1.7 hours	28	48 hours.
FF 76–10A	28	1	1.2 hours	28	34 hours.
FF 20–10	28	2	1 hour	56	56 hours.
SF 270	28	1	1 hour	28	28 hours.
SF LLL	28	1	10 minutes	28	5 hours.
Subtotal	28		16 hours	224	498 hours.
CAP-SSSE:					
SF 424	56	1	45 minutes	56	42 hours.
FF 20–20	56	1	9.7 hours	56	543 hours.
FF 20–15	56	1	17.2 hours	56	963 hours.
FF 20–16, A, B, C	56	1	1.7 hours	56	95 hours.
FF 76–10A	56	1	1.2 hours	56	67 hours.
FF 20–10	56	2	1 hour	112	112 hours.
FF 20–18	56	1	4.2 hours	56	235 hours.
FF 20–19	56	1	5 minutes	56	4 hours.
SF LLL	56	1	10 minutes	56	9 hours.
Subtotal	56		36 hours	560	2,070 hours.
CSEPP:					
SF 424	10	1	45 minutes	10	8.0 hours.
FF 20–20	10	1	9.7 hours	10	97.0 hours.
FF 20–10	10	4	1 hour	40	40.0 hours.
FF 20–16, A, B, C	10	1	1.7 hour	10	17.0 hours.
FF 76–10A	10	1	1.2 hour	10	12.0 hours.
FF 20–18	10	1	4.2 hours	10	42.0 hours.
FF 20–19	10	1	5 minutes	10	1.0 hours.
SF LLL	10	1	10 minutes	10	2.0 hours.
Subtotal	10		19 hours	120	219 hours.
NDSP:					
SF 424	51	1	45 minutes	51	38.0 hours.
FF 20–20	51	1	9.7 hours	51	495.0 hours.
FF 20–16, A, B, C	51	1	1.7 hours	51	87.0 hours.
FF 76–10A	51	1	1.2 hours	51	61.0 hours.
FF 20–10	51	4	1 hour	204	204.0 hours.
SF 270	51	1	1 hour	51	51.0 hours.
SF LLL	51	1	10 minutes	51	8.0 hours.
Subtotal	51		16 hours	510	944 hours.
ICE:					
FF 20–10	17	4	1 hour	68	68.0 hours.
Subtotal	17		1 hour	17	68 hours.

NON-DISASTER PROGRAMS—Continued

Data collection activity/instruments	Number of respondents (A)	Frequency of responses (B)	Hour burden per response (C)	Annual responses (D) = (A × B)	Total burden hours (C × D)
EqC:					
FF 20–10	3	2	1 hour	6	6 hours.
Subtotal	3		1 hour	6	6 hours.
AIDMATRIX:					
SF 424	1	1	45 minutes	1	.75 minutes.
FF 20–20	1	1	9.7 hours	1	9.7 hours.
FF 20–10	1	4	1 hour	4	4.0 hours.
FF 20–16 A, B, C	1	1	1.7 hours	1	1.7 hours.
SF LLL	1	1	10 minutes	1	.16 minutes.
Subtotal	1		13 hours	8	16 hours.
AHPP:					
SF 424	4	1	45 minutes	4	3.0 hours.
FF 20–20	4	1	9.7 hours	4	39.0 hours.
FF 20–10	4	4	1 hour	16	16.0 hours.
FF 20–16, A, B, C	4	1	1.7 hours	4	6.8 hours.
SF LLL	4	1	10 minutes	4	.66 hours.
Subtotal	4		13 hours	32	65 hours.
CTP:					
SF 424	20	1	45 minutes	20	15.0 hours.
FF 20–20	20	1	9.7 hours	20	194.0 hours.
FF 20–15	20	1	17.2 hours	20	344.0 hours.
FF 20–16, A, B, C	20	1	1.7 hours	20	34.0 hours.
FF 20–10	20	4	1 hour	80	80.0 hours.
SF LLL	20	1	10 minutes	20	3.3 hours.
Subtotal	20		31 hours	180	670.3 hours.
MMMS:					
SF 424	20	1	45 minutes	20	15.0 hours.
FF 20–20	20	1	9.7 hours	20	194.0 hours.
FF 20–15	20	1	17.2 hours	20	344.0 hours.
FF 20–16, A, B, C	20	1	1.7 hours	20	34.0 hours.
FF 20–10	20	2	1 hour	40	40.0 hours.
SF LLL	20	1	10 minutes	20	3.0 hours.
Subtotal	20		31 hours	120	630 hours.
RFC:					
SF 424	56	1	45 minutes	56	42.0 hours.
FF 20–20	56	1	9.7 hours	56	543.0 hours.
FF 76–10A	56	1	1.2 hours	56	67.0 hours.
FF 20–16, A, B, C	56	1	1.7 hours	56	95.0 hours.
FF 20–10	56	4	1 hour	224	224.0 hours.
FF 20–18	56	1	4.2 hours	56	235.0 hours.
FF–20–19	56	1	5 minutes	56	5.0 hours.
SF LLL	56	1	10 minutes	56	9.0 hours.
Subtotal	56		19 hours	616	1,220 hours.
SRL:					
FF 424	56	1	45 minutes	56	42.0 hours.
FF 20–20	56	1	9.7 hours	56	543.0 hours.
FF 76–10A	56	1	1.2 hours	56	67.0 hours.
FF 20–16, A, B, C	56	1	1.7 hours	56	95.0 hours.
FF 20–10	56	4	1 hour	224	224.0 hours.
FF 20–18	56	1	4.2 hours	56	235.0 hours.
FF 20–19	56	1	5 minutes	56	5 hours.
SF LLL	56	1	10 minutes	56	9.0 hours.
Subtotal	56		19 hours	616	1,220 hours.
FMA:					
SF 424	56	3	45 minutes	168	126.0 hours.
FF 20–20	56	3	9.7 hours	168	1630.0 hours.
FF 20–16, A, B, C	56	1	1.7 hours	56	95.0 hours.
FF 76–10A	56	3	1.2 hours	168	202.0 hours.
FF 20–10	56	4	1 hour	224	224.0 hours.
FF 20–18	56	1	4.2 hours	56	235.0 hours.
FF 20–19	56	1	5 minutes	56	4.0 hours.
SF LLL	56	1	10 minutes	56	9.0 hours.
Subtotal	56		19 hours	952	2,525 hours.

NON-DISASTER PROGRAMS

Data collection activity/instruments	Number of respondents (A)	Frequency of responses (B)	Hour burden per response (C)	Annual responses (D) = (A × B)	Total burden hours (C × D)
PDM:					
SF 424	56	2	45 minutes	112	84 hours.
FF 20–15	56	1	17.2 hours	56	963.2 hours.
FF 20–20	56	2	9.7 hours	112	1,086.4 hours.
FF 76–10A	56	2	1.2 hours	112	134.4 hours.
FF 20–16, A, B, C	56	2	1.7 hours	112	190.4 hours.
FF 20–10	56	8	1 hour	448	448 hours.
FF 20–17	56	20	17.2 hours	1,120	19,264 hours.
FF 20–18	56	2	4.2 hours	112	470.4 hours.
FF 20–19	56	2	5 minutes	112	9.3 hours.
SF LLL	56	2	10 minutes	112	18.6 hours.
Subtotal	56		53 hours	2,408	22,668.7 hours.
AFG*:					
SF 424	4,246	1	45 minutes	4,246	3,185.0 hours.
FF 20–20	4,246	2	9.7 hours	8,492	82,372.0 hours.
FF 76–10A	4,246	2	1.2 hours	8,492	10,190.0 hours.
FF 20–16, A, B, C	4,246	1	1.7 hours	4,246	7,218.0 hours.
FF 20–10	4,246	2	1 hour	8,492	8,492.0 hours.
FF 20–17	4,246	1	17.2 hour	4,246	73,031.0 hours.
FF 20–18	4,246	1	4.2 hours	4,246	17,833.0 hours.
FF 20–19	4,246	1	5 minutes	4,246	340.0 hours.
SF LLL	4,246	1	10 minutes	4,246	705.0 hours.
Subtotal	4,246		36 hours	50,952	203,366 hours.
SAFER*:					
SF 424	243	1	45 minutes	243	182.0 hours.
FF 20–20	243	2	9.7 hours	486	4,714.0 hours.
FF 76–10A	243	2	1.2 hours	486	583.0 hours.
FF 20–16, A, B, C	243	1	1.7 hours	243	413.1 hours.
FF 20–10	243	4	1 hour	972	972 hours.
FF 20–17	243	1	17.2 hours	243	4,179.6 hours.
FF 20–18	243	1	4.2 hours	243	1,020.6 hours.
FF 20–19	243	1	5 minutes	243	20.2 hours.
SF LLL	243	1	10 minutes	243	40.5 hours.
Subtotal	243		36 hours	3,402	12,125.7 hours.
Non-Disaster Grants Total			359	55,378	248,312.
Grand Total			469	59,178	2,100,433.

* AFG and SAFER grants are awarded directly to individual Fire departments.

3. Collection of Information

The information collection activity under the approved OMB information collection 1660–0072, Mitigation Grant Program/e-Grants (previous named Flood Mitigation Assistance (e-Grants)) and Grant Supplemental Information is an electronic system used to meet the intent of the eGovernment initiative. This collection does not supersede the paper-based collection for Grants (OMB No. 1660–0025). Applicants may apply using the e-Grants (1660–0072) application accessible on the Internet at *https://portal.fema.gov*. The OMB approved collection 1660–0072 have been combined with OMB No. 1660–0071, Pre-Disaster Mitigation (PDM) Grant Program/e-Grants to streamline and simplify documentation of the same information collected for all mitigation e-Grants program. Because of this change OMB No. 1660–0071 has been discontinued as a separate collection. This collection also includes the authorized SRL program.

Title: Mitigation Grant Program/e-Grants.

OMB Number: 1660–0072.

Abstract: The States will utilize the Mitigation Grant Program/e-Grants, automated application to report to FEMA on a quarterly basis, certify how funding is being used and to report on the progress of mitigation activities funded under grant awards, made to grantees by FEMA who will use the system to review the grantees quarterly reports to ensure that mitigation grant activities are progressing on schedule and to track the expenditures of funds.

Affected Public: State, Local or Tribal Government.

Estimated Total Annual Burden Hours:

Project/activity (survey, forms(s), focus group, etc.)	Number of respondents	Frequency of responses	Burden hours per respondent	Annual responses	Total annual burden hours
FMA:					
Benefit-Cost Determination	56	2	5	112	560

Project/activity (survey, forms(s), focus group, etc.)	Number of respondents	Frequency of responses	Burden hours per respondent	Annual responses	Total annual burden hours
Environmental Review	56	2	7.5	112	840
Project Narrative—Sub-grant Application	56	4	12	224	2,688
Subtotal FMA	56		24.5	448	4,088
RFC:					
Benefit-Cost Determination	56	1	5	56	280
Environmental Review	56	1	7.5	56	420
Project Narrative—Sub-grant Application	56	2	12	112	1,344
Subtotal RFC	56		24.5	224	2,084
PDM:					
Benefit-Cost Determination	56	20	5	1,120	5,600
Environmental Review	56	20	7.5	1,120	8,400
Project Narrative—Sub-grant Application (including PDM Evaluation Information Questions [5])	56	20	12	1,120	13,440
Subtotal PDM	56		24.5	3,360	27,440
SRL:					
Benefit-Cost Determination	56	7	5	392	1,960
Environment Review	56	7	7.5	392	2,940
Project Narrative—Sub-grant Application	56	8	12	448	5,376
Subtotal SRL	56		24.5	1,232	10,276
Total	56		98	5264	43,888

4. Collection of Information

The Property Acquisition and Relocation for Open Space (part 80) will govern property acquisitions for the creation of open space under all of FEMA mitigation grant programs authorized under both the Stafford Act and the National Flood Insurance Act of 1968, as amended. Acquisition and relocation of property for open space use is one of the most common mitigation activities, and is an eligible activity type authorized for Federal grant funds under all of FEMA mitigation grant programs. FEMA mitigation grant programs require all properties acquired with FEMA funds to be deed restricted and maintained as open space in perpetuity. This ensures that no future risks from hazards occur to life or structures on that property, and no future disaster assistance or insurance payments are made as a result of damages to that property. This new collection of information is necessary to establish uniform requirements for State and local implementation of acquisition activities, and to enforce open space maintenance and monitoring requirements for properties acquired with FEMA mitigation grant funds. This interim rule includes a conforming amendment to the HMGP to refer to the new part 80 for acquisition and relocation activities, and deletes § 206.434(f).

Title: Property Acquisition and Relocation for Open Space.

Type of Information Collection: New Collection.

OMB Number: 1660–New23.

Form Numbers: None.

Abstract: FEMA and State and local recipients of FEMA mitigation grant programs will use the information collected under the Property Acquisition requirements to implement acquisition activities under the terms of grant agreements for acquisition and relocation activities. FEMA and State/local grant recipients will also use the information to monitor and enforce the open space requirements for all properties acquired with FEMA mitigation grants.

Affected Public: State, local, or Indian tribal government and individuals or households.

Estimated Total Annual Burden Hours:

Data collection activity	Number of respondents	Frequency of responses	Number of responses	Hour burden per response	Total burden hours
Voluntary Participation Statement	56	40	1	2240	2440
Deed Restriction Requirements	56	40	4	2240	8960
Monitoring and Reporting Requirements	56	1	4	56	224
Transfer Certification					
Enforcement Notices					
Total	56		9	4,536	11,424

5. Collection of Information

The appeals process in § 79.7(d) outlines the process by which any owner of a severe repetitive loss property may appeal the decision of FEMA to increase the chargeable insurance premium rate on property. The legislation that created the SRL program provides that any owner of a severe repetitive loss property who refuses an offer of mitigation may appeal the decision of FEMA to increase the chargeable insurance premium rate on that property. The process requires the owner to submit a written appeal, including any supporting documentation for their appeal to FEMA within 90 days of the notice of the insurance rate increase. This new collection of information is necessary to ensure that the property owner is given

opportunity to provide additional documentation that support one of the six allowable bases for appeal, outlined in the authorizing legislation, and implemented at § 79.7(d).

Title: Severe Repetitive Loss (SRL) Appeals Process.

Type of Information Collection: New Collection.

OMB Number: 1660–New36.

Form Numbers: None.

Abstract: The SRL program provides property owners with the ability to appeal an increase in their flood insurance premium rate if they refuse an offer of mitigation under this program. The property owner must submit information to FEMA to support their appeal.

Affected Public: Federal Government, and individuals or households.

Estimated Total Annual Burden Hours:

Data collection activity	Number of respondents	Frequency of responses	Number of responses	Hour burden per response	Total burden hours
Appeal written request and supporting documentation	10	1	10	10	100
Total	10		10	10	100

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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 technology, *e.g.*, permitting electronic submission of responses. FEMA will continue to accept comments from interested persons through December 31, 2007. Submit comments by one of the methods provided in the **ADDRESSES** section at the beginning of this rule.

Requests for additional information regarding FEMA's Paperwork Reduction Act requirements or copies of the information collection should be made to Chief, Records Management and Privacy, FEMA, 500 C Street, SW., Room 609, Washington, DC 20472, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov.*

G. Executive Order 13132, Federalism

Executive Order 13132, Federalism, dated August 4, 1999, sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that have substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action.

FEMA published a **Federal Register** notice on September 15, 2004, 69 FR 55642, to initiate consultation with State and local officials, as well as members of the public in the formulation of this rule. Interested parties initially had until November 30, 2004, to submit written comments in response to the notice. FEMA extended the deadline for comments until December 7, 2004, and received 23 written comments from States, communities, and associations.

On November 17, 2004, as part of the consultation process, FEMA held a meeting in Washington DC with representative officials of State and local governments; organizations representing emergency management, floodplain management, and insurance professions; and other interested parties.

Both the written comments received and the oral comments presented at the meeting addressed aspects of the SRL program, including the circumstances affecting severe repetitive loss property owners, the mitigation offer process, the effects of insurance premium increases on individuals who refuse mitigation offers, and the appeals process. In the context of preparing this rule, FEMA reviewed and addressed all of the comments received in response to the **Federal Register** notice including the oral presentations made on November 17, 2004.

FEMA has reviewed this rule under Executive Order 13132 and has concluded that the rule, which implements statutory requirements for a new SRL program as well as a potential increase in the Federal share for the FMA program, simplifies the planning requirements, and reflects a statutorily mandated change to the HMGP allocation, does not have federalism implications as defined by the Executive Order. FEMA has determined that the rule does not significantly affect the rights, roles, and responsibilities of States, and involves no preemption of State law nor does it limit State policymaking discretion.

FEMA will continue to evaluate the new SRL and FMA programs, as well as the planning requirements, and will work with interested parties as FEMA implements the requirements of 44 CFR parts 59, 61, 78, 79, 80, 201, and 206. In addition, FEMA actively encourages and solicits comments on this interim rule from interested parties, and FEMA will consider those comments in preparing the final rule.

H. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

FEMA has reviewed this interim rule under Executive Order 13175. In reviewing the portion of the interim rule which streamlines the mitigation planning requirements affecting Indian tribal governments, FEMA finds that, while it does have ''tribal implications'' as defined in Executive Order 13175, 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.

FEMA has worked with Indian tribal governments while implementing its programs, and has modified its procedures to accommodate some of the issues relating to the tribal governments. This rule clarifies those procedures and streamlines the roles and responsibilities of Indian tribal governments in mitigation planning. In the February 26, 2002 interim rule, Indian tribal governments were given the option of preparing either a State-level Mitigation Plan, or a Local-level Mitigation Plan depending on whether or not they intended to apply directly to FEMA as a grantee, or whether they

would apply through the State as a subgrantee. Neither of these options has sufficiently met the needs of the Indian tribal governments. The new interim rule establishes a specific planning requirement for Indian tribal governments that recognizes some of the unique aspects of these governments. The rule establishes requirements for Tribal Mitigation Plans for plans prepared and approved after December 3, 2007. The rule provides that plans prepared and approved under the preexisting rule, either under the State or local requirements, would also be recognized as Tribal Mitigation Plans. These older plans, however, would be required to meet the revised criteria when the original plan approval expires. This rule combines the appropriate aspects of State and local planning requirements into one section for Indian tribal governments. Prior to the preparation of this rule, FEMA discussed the planning requirements with many of the Indian tribal governments as they were developing their own plans, or while attending tribal training courses, and heard the concerns regarding the planning requirements.

In conclusion, the interim rule does not impose substantial direct compliance costs on Indian tribal governments, nor does it preempt tribal law, impair treaty rights nor limit the self-governing powers of Indian tribal governments.

I. Congressional Review of Agency Rulemaking

FEMA has sent this interim rule to the Congress and to the General Accountability Office under the Congressional Review of Agency Rulemaking Act, (Congressional Review Act), Public Law 104–121. This interim rule is not a ''major rule'' within the meaning of the Congressional Review Act. It implements statutory requirements creating the SRL program and statutory amendments providing for an increased Federal share for FMA projects affecting severe repetitive loss properties; streamlines and makes consistent the planning requirements for FMA and Indian tribal governments; and makes a technical update to reflect a statutory change in the HMGP allocation.

The interim rule will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have ''significant adverse effects'' on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises. The rule is not an unfunded Federal mandate within the meaning of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, and any enforceable duties that FEMA imposes are a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

J. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') mandates that an agency conduct a RFA analysis when an agency is ''required by section 553 * * * to publish general notice of proposed rulemaking for any proposed rule * * * 5 U.S.C. 603(a). Accordingly, RFA analysis is not required when a rule is exempt from notice and comment rulemaking under 5 U.S.C. 553(b). DHS has determined that good cause exists under 5 U.S.C. 553(b)(B) to exempt this rule from the notice and comment requirements of 5 U.S.C. 553(b). Therefore no RFA analysis under 5 U.S.C. 603 is required for this rule.

K. Executive Order 12630, Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. In fact, § 80.5(a) states that

> [e]ligible acquisition projects are those where the property owner participates voluntarily, and the grantee/subgrantee will not use its eminent domain authority to acquire the property for the open space purposes should negotiations fail.

L. Executive Order 12988, Civil Justice Reform

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

List of Subjects

44 CFR Part 59

Flood insurance, Reporting and recordkeeping requirements.

44 CFR Part 61

Flood insurance, Reporting and recordkeeping requirements.

44 CFR Parts 78 and 79

Flood insurance, Grant programs.

44 CFR Part 80

Acquisition and relocation for open space.

44 CFR Part 201

Administrative practice and procedure, Disaster assistance, Grant programs, Reporting and recordkeeping requirements.

44 CFR Part 206

Administrative practice and procedure, Coastal zone, Community facilities, Disaster assistance, Fire prevention, Grant programs—housing and community development, Housing, Insurance, Intergovernmental relations, Loan programs—housing and community development, Natural resources, Penalties, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Federal Emergency Management Agency amends 44 CFR chapter I as set forth below:

PART 59—GENERAL PROVISIONS

■ 1. The authority citation for part 59 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

■ 2. Section 59.1 is amended by revising the definition of *State* as follows:

§ 59.1 Definitions.

* * * * *

State means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

* * * * *

PART 61—INSURANCE COVERAGE AND RATES

■ 3. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

■ 4. In § 61.9 add paragraphs (d) and (e) as follows:

§ 61.9 Establishment of chargeable rates.

* * * * *

(d) Properties that meet the definition of Severe Repetitive Loss properties as defined in § 79.2(g) of this subchapter, and who refuse an offer of mitigation pursuant to § 79.7 of this subchapter are not eligible for the rates identified in paragraphs (a) through (c) of this section.

(e) Properties leased from the Federal Government and located either on the

river-facing side of a dike, levee, or other riverine flood control structure, or seaward of any seawall or other coastal flood control structure are not eligible for the rates identified in paragraphs (a) through (c) of this section.

PART 78—FLOOD MITIGATION ASSISTANCE

■ 5. The authority citation for part 78 is revised to read as follows:

Authority: 6 U.S.C. 101; 42 U.S.C. 4001 *et seq.*; 42 U.S.C. 4104c, 4104d; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

■ 6. Revise § 78.1(a) to read as follows:

§ 78.1 Purpose.

(a) The purpose of this part is to prescribe actions, procedures, and requirements for administration of the Flood Mitigation Assistance (FMA) program, authorized by Sections 1366 and 1367 of the National Flood Insurance Act of 1968, 42 U.S.C. 4104c and 4104d. The rules in this part apply to the administration of funds awarded under the FMA program for which the application period opened prior to December 3, 2007. On or after that date, the administration of funds awarded under FMA program shall be subject to the rules in part 79 of this subchapter.

* * * * *

■ 7. Remove the undesignated center heading FEDERAL CRIME INSURANCE PROGRAM which precedes RESERVED PARTS 80–149.

■ 8. Add part 79 to read as follows:

PART 79—FLOOD MITIGATION GRANTS

Sec.
79.1 Purpose.
79.2 Definitions.
79.3 Responsibilities.
79.4 Availability of funding.
79.5 Application process.
79.6 Eligibility.
79.7 Offers and appeals under the SRL program.
79.8 Allowable costs.
79.9 Grant administration.

Authority: 6 U.S.C. 101; 42 U.S.C. 4001 *et seq.*; 42 U.S.C. 4104c, 4104d; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

§ 79.1 Purpose.

(a) The purpose of this part is to prescribe actions, procedures, and requirements for administration of the hazard mitigation grant programs made available under the National Flood Insurance Act of 1968, as amended, and the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4001 *et seq.* The Severe Repetitive Loss (SRL) and Flood Mitigation Assistance (FMA) grant programs mitigate losses from floods, minimizing impacts to the National Flood Insurance Fund (NFIF). The rules in this part apply to the administration of funds under the SRL and FMA programs for which the application period opens on or after December 3, 2007. Prior to this date, the administration of funds under the FMA program shall be subject to the rules in part 78 of this subchapter.

(b) The purpose of the SRL program is to:

(1) Assist State and local governments in funding actions that reduce or eliminate the risk of flood damage to residential properties insured under the National Flood Insurance Program (NFIP) that meet the definition of severe repetitive loss property;

(2) Reduce the need to increase flood insurance premiums of NFIP policyholders that would otherwise be required to pay for potential future repetitive claims associated with severe repetitive loss properties; and

(3) Reduce loss of life, property damage, outlays for the NFIF, and Federal disaster assistance by reducing or eliminating the risk of flood damage to those insured properties that have historically experienced the most severe flood losses.

(c) The purpose of the FMA program is to assist State and local governments in funding cost-effective actions that reduce or eliminate the risk of flood damage to buildings, manufactured homes, and other structures insured under the NFIP.

§ 79.2 Definitions.

(a) Except as otherwise provided in this part, the definitions set forth in section 59.1 of this subchapter are applicable to this part.

(b) *Applicant* is the State or Indian tribal government applying to FEMA for a grant, and which will be accountable for the use of the funds.

(c) *Community* means:

(1) A political subdivision, including any Indian tribe, authorized tribal organization, Alaskan native village or authorized native organization, that has zoning and building code jurisdiction over a particular area having special flood hazards, and is participating in the NFIP; or

(2) A political subdivision of a State, or other authority that is designated by a political subdivision to develop and administer a mitigation plan.

(d) *Grantee* means the State or Indian tribal government to which FEMA awards a grant and which is accountable for the use of the funds provided. The grantee is the entire legal entity, even if only a particular component of the entity is designated in the grant award document.

(e) *Market Value* is generally defined as the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the property would have sold on the effective date of the valuation, after a reasonable exposure time on the open competitive market, from a willing and reasonably knowledgeable seller to a willing and reasonably knowledgeable buyer, with neither acting under any compulsion to buy or sell, giving due consideration to all available economic uses of the property at the time of the valuation.

(f) *Multifamily Property* means a property consisting of 5 or more residences.

(g) *Severe Repetitive Loss Properties* are defined as single or multifamily residential properties that are covered under an NFIP flood insurance policy and:

(1) That have incurred flood-related damage for which 4 or more separate claims payments have been made, with the amount of each claim (including building and contents payments) exceeding $5,000, and with the cumulative amount of such claims payments exceeding $20,000; or

(2) For which at least 2 separate claims payments (building payments only) have been made under such coverage, with cumulative amount of such claims exceeding the market value of the building.

(3) In both instances, at least 2 of the claims must be within 10 years of each other, and claims made within 10 days of each other will be counted as 1 claim.

(h) *Subapplicant* means a State agency, community, or Indian tribal government submitting an application for planning or project activity to the applicant for assistance under the FMA or SRL programs. Upon grant award, the subapplicant is referred to as the subgrantee.

(i) *Subgrant* means an award of financial assistance made under a grantee to an eligible subgrantee.

(j) *Subgrantee* means the State agency, community, or Indian tribal government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

(k) *Administrator* means the head of the Federal Emergency Management

Agency, or his/her designated representative, appointed under section 503 of the Post-Katrina Emergency Management Reform Act of 2006 (Pub. L. 109–295). The term also refers to the Director as discussed in part 2 of this chapter.

(l) *Regional Administrator* means the head of a Federal Emergency Management Agency regional office, or his/her designated representative, appointed under section 507 of the Post-Katrina Emergency Management Reform Act of 2006 (Pub. L. 109–295). The term also refers to Regional Directors as discussed in part 2 of this chapter.

§ 79.3 Responsibilities.

(a) *Federal Emergency Management Agency (FEMA).* Administer and provide oversight to all FEMA-related hazard mitigation programs and grants, including:

(1) Issue program implementation procedures, as necessary, which will include information on availability of funding;

(2) Allocate funds to States for the FMA and for the SRL programs;

(3) Award all grants to the grantee after evaluating subgrant applications for eligibility and ensuring compliance with applicable Federal laws, giving priority to such properties, or to the subset of such properties, as the Administrator may determine are in the best interest of the NFIF;

(4) Provide technical assistance and training to State, local and Indian tribal governments regarding the mitigation and grants management process;

(5) Review and approve State, Indian tribal, and local mitigation plans in accordance with part 201 of this chapter;

(6) Comply with applicable Federal statutory, regulatory, and Executive Order requirements related to environmental and historic preservation compliance, including reviewing and supplementing, if necessary, the environmental analyses conducted by the State and subgrantee in accordance with part 10 of this chapter;

(7) Establish and maintain an updated list of SRL properties and make such information available to States and communities; and

(8) Notify owners of SRL properties that their properties meet the definition of a severe repetitive loss property and provide a summary of the opportunities and implications of being identified as such.

(b) *State.* The State will serve as the applicant and grantee through a single Point of Contact (POC) for the FMA and SRL programs. The POC is a State agency that must have working knowledge of NFIP goals, requirements, and processes and ensure that the programs are coordinated with other mitigation activities at the State level. States will:

(1) Have a FEMA approved Mitigation Plan in accordance with part 201 of this chapter;

(2) Review and submit local mitigation plans to the FEMA Regional Administrator for final review and approval;

(3) Provide technical assistance and training to communities on mitigation planning, mitigation project activities, developing subgrant applications, and implementing approved subgrants;

(4) Prioritize and recommend subgrant applications to be approved by FEMA, based on the State Mitigation Plan, other State evaluation criteria and the eligibility criteria described in § 79.6;

(5) Award FEMA-approved subgrants; and

(6) Comply with program requirements under this part, grant management requirements identified under part 13 of this chapter, the grant agreement articles, and other applicable Federal, State, tribal and local laws and regulations.

(c) *Indian tribal governments.* The Indian tribal government will coordinate all tribal activities relating to hazard evaluation and mitigation including:

(1) Have a FEMA approved Tribal Mitigation Plan in accordance with § 201.7 of this chapter;

(2) A Federally Recognized Indian tribal government as defined by the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a, applying directly to FEMA for mitigation grant funding will assume the responsibilities of the ''State'' as the term is used in this part, as applicant or grantee, described in paragraphs (b)(3) through (6) of this section; and

(3) A Federally Recognized Indian tribal government as defined by the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a, applying through the State, will assume the responsibilities of the community (as the subapplicant or subgrantee) described in paragraphs (d)(2) through (4) of this section.

(d) *Community.* The community (referred to as both subapplicant and subgrantee) will:

(1) Prepare and submit a FEMA-approved Local Mitigation Plan, consistent with the requirements of part 201 of this chapter;

(2) Complete and submit subgrant applications to the State POC for FMA planning, project and management cost subgrants, and for SRL project and management cost subgrants;

(3) Implement all approved subgrants; notifying each holder of a recorded interest in severe repetitive loss properties when an offer of mitigation assistance has been made under the SRL program, and when such offer has been refused; and

(4) Comply with program requirements under this part, grant management requirements identified under part 13 of this chapter, the grant agreement articles, and other applicable Federal, State, tribal and local laws and regulations.

§ 79.4 Availability of funding.

(a) *Allocation.* (1) For the amount made available for the SRL program, the Administrator will allocate the available funds to States each fiscal year based upon the percentage of the total number of severe repetitive loss properties located within that State. Ten percent of the total funds made available in any fiscal year will be made available to States and Indian tribal applicants that have at least 1 SRL property and that receive little or no allocation.

(2) For the amount made available for the FMA program, the Administrator will allocate the available funds each fiscal year. Funds will be distributed based upon the number of NFIP policies, repetitive loss structures, and any other such criteria as the Administrator may determine are in the best interests of the NFIF.

(i) A maximum of 7.5 percent of the amount made available in any fiscal year may be allocated for FMA planning grants nationally. A planning grant will not be awarded to a State or community more than once every 5 years, and an individual planning grant will not exceed $150,000 to any State agency applicant, or $50,000 to any community subapplicant. The total planning grant made in any fiscal year to any State, including all communities located in the State, will not exceed $300,000.

(ii) The total amount of FMA project grant funds provided during any 5-year period will not exceed $10,000,000 to any State agency(s) or $3,300,000 to any community. The total amount of project grant funds provided to any State, including all communities located in the State will not exceed $20,000,000 during any 5-year period. The Administrator may waive the limits of this subsection for any 5-year period when a major disaster or emergency is declared pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act for flood conditions.

(b) *Redistribution.* Funds allocated to States who choose not to participate in

either the FMA or SRL program in any given year will be reallocated to participating States and Indian tribal applicants. Any funds allocated to a State, and the communities within the State, which have not been obligated within the timeframes established by the Administrator, shall be redistributed by the Administrator to other States and communities to carry out eligible activities in accordance with this part.

(c) *Cost share.* All mitigation activities approved under the State's grant will be subject to the following cost-share provisions:

(1) FEMA may contribute up to 75 percent of the eligible cost of activities for grants approved for funding; or

(2) FEMA may contribute up to 90 percent of the cost of the eligible activities for each severe repetitive loss property for which grant amounts are provided if the State has an approved State Mitigation Plan meeting the repetitive loss requirements identified in § 201.4(c)(3)(v) of this chapter at the time the project application is submitted;

(3) For the FMA program only, of the non-Federal contribution, not more than one half will be provided from in-kind contributions.

§ 79.5 Application process.

(a) *Applicant or grantee.* (1) States will be notified of the amount allocated to them for the SRL and FMA programs each fiscal year, along with the application timeframes.

(2) The State will be responsible for soliciting applications from eligible communities, or subapplicants, and for reviewing and prioritizing applications prior to forwarding them to FEMA for review and award.

(3) Participation in these flood mitigation grant programs is voluntary, and States may elect not to participate in either the SRL or FMA program in any fiscal year without compromising their eligibility in future years.

(4) Indian tribal governments interested in applying directly to FEMA for either the FMA or SRL program grants should contact the appropriate FEMA Regional Administrator for application information.

(b) *Subapplicant or subgrantee.* Participation in the SRL and the FMA program is voluntary, and communities may elect not to apply. Communities or other subapplicants who choose to apply must develop applications within the timeframes and requirements established by FEMA and must submit applications to the State.

§ 79.6 Eligibility.

(a) *Eligible applicants and subapplicants.* (1) States, Indian tribal governments, and communities participating in the NFIP may apply for FMA planning and project grants and associated management costs.

(2) States, Indian tribal governments, and communities participating in the NFIP may apply for SRL project grants and associated management costs.

(3) Communities withdrawn, suspended, or not participating under part 60 of this subchapter of the NFIP are not eligible for either the FMA or SRL programs.

(b) *Plan requirement.* (1) States must have an approved State Mitigation Plan meeting the requirements of §§ 201.4 or 201.5 of this chapter in order to apply for grants through the FMA or SRL programs. Indian tribal governments must have an approved plan meeting the requirements of part 201 of this chapter at the time of application.

(2) In order to be eligible for FMA and SRL project grants, subapplicants must have an approved mitigation plan at the time of application in accordance with part 201 of this chapter that, at a minimum, addresses flood hazards.

(c) *Eligible activities.* (1) *Planning.* FMA planning grants may be used to develop or update State, Indian tribal and/or local mitigation plans which meet the planning criteria outlined in part 201 of this chapter. FMA planning grants are limited to those activities necessary to develop or update the flood portion of any mitigation plan. Planning grants are not eligible for funding under the SRL program.

(2) *Projects.* Projects funded under the SRL program are limited to those activities that specifically reduce or eliminate flood damages to severe repetitive loss properties. Projects funded under the FMA program are limited to activities that reduce flood damages to properties insured under the NFIP. For either program, applications involving any activities for which implementation has already been initiated or completed are not eligible for funding, and will not be considered. Eligible activities are:

(i) Acquisition of real property from property owners, and demolition or relocation of buildings to convert the property to open space use in perpetuity, in accordance with part 80 of this subchapter;

(ii) Demolition or relocation of structures to areas outside of the floodplain;

(iii) Elevation of existing structures to at least base flood levels or higher, if required by FEMA or if required by any State or local ordinance, and in accordance with criteria established by the Administrator;

(iv) Floodproofing of existing non-residential structures in accordance with the requirements of the NFIP or higher standards if required by FEMA or if required by any State or local ordinance, and in accordance with criteria established by the Administrator;

(v) Floodproofing of historic structures as defined in § 59.1 of this subchapter;

(vi) For SRL only, demolition and rebuilding of properties to at least base flood levels or higher, if required by FEMA or if required by any State or local ordinance, and in accordance with criteria established by the Administrator; and

(vii) Minor physical localized flood reduction measures that lessen the frequency or severity of flooding and decrease predicted flood damages, and that do not duplicate the flood prevention activities of other Federal agencies. Major flood control projects such as dikes, levees, floodwalls, seawalls, groins, jetties, dams and large-scale waterway channelization projects are not eligible.

(d) *Minimum project criteria.* In addition to being an eligible project type, mitigation grant projects must also:

(1) Be in conformance with mitigation plans approved under part 201 of this chapter for the State and community where the project is located;

(2) Be in conformance with part 9 of this chapter, Floodplain management and protection of wetlands, part 10 of this chapter, Environmental considerations, § 60.3 of this subchapter, Flood plain management criteria for flood-prone areas, and other applicable Federal, State, tribal, and local laws and regulations;

(3) Be technically feasible;

(4) Solve a problem independently, or constitute a functional portion of a long-term solution where there is assurance that the project as a whole will be completed. This assurance will include documentation identifying the remaining funds necessary to complete the project, and the timeframe for completing the project;

(5) Be cost-effective and reduce the risk of future flood damage;

(6) Consider long-term changes to the areas and entities it protects, and have manageable future maintenance and modification requirements. The subgrantee is responsible for the continued maintenance needed to preserve the hazard mitigation benefits of these measures; and

(7) Not duplicate benefits available from another source for the same purpose or assistance that another Federal agency or program has more primary authority to provide.

§ 79.7 Offers and appeals under the SRL program.

(a) *Consultation.* States and communities shall consult, to the extent practicable, and in accordance with criteria determined by the Administrator, with owners of the severe repetitive loss properties to select the most appropriate eligible mitigation activity. These consultations shall be initiated in the early stages of the project development, and shall continue throughout the process. After FEMA awards the project grant, the subgrantee shall continue to consult with the property owners to determine the specific conditions of the offer.

(b) *Mitigation offer.* After FEMA awards the grant and the subgrantee completes final consultations with the property owners, the subgrantee shall develop and present official offers to the property owners participating in the mitigation activities.

(1) The offer shall include all pertinent information regarding the mitigation activity, including a detailed description of the activity (*e.g.* property acquisition, elevation), the responsibilities of and benefits to the property owner, a summary of the consultation process, timeframes, and the consequences of refusing such offer. For open space acquisitions, it will also include the market value of the property, the basis for the purchase offer, and the final offer amount. The offer will also clearly state that the property owner's participation in the SRL program is voluntary.

(2) The subgrantee will send the written offer to the property owner's current mailing address as a certified letter, along with a copy to the appropriate FEMA Regional Administrator. In addition, the subgrantee will notify each holder of a recorded interest on the property when such offer is extended, along with the identification of the mitigation assistance being offered.

(3) The property owner will have 45 days from the date of the letter to accept or refuse the offer of mitigation assistance in writing. Failure to respond in writing within this time period will be deemed a refusal of the offer.

(c) *Insurance increases due to refusal of offer.* In any case in which the property owner refuses an offer of mitigation assistance made through the SRL program, the Administrator shall provide written notice that the chargeable insurance rates with respect to the property will increase effective on the next renewal of the policy.

(1) The chargeable insurance premium rate shall be increased to the amount equal to 150 percent of the chargeable rate for the property at the time that the offer was made, as adjusted by any other premium adjustments otherwise applicable to the property. Each time there is another claim payment in excess of $1,500, the chargeable premium rate for that property shall be the amount equal to 150 percent over the chargeable rate at the time of every such claim, as adjusted by any other premium adjustments otherwise applicable to the property. The increases shall end when the actuarial rate is reached.

(2) Upon each renewal or modification of the flood insurance coverage, the property owner will be able to accept the original mitigation offer, if the community, through the State, forwards the request to FEMA, and if sufficient funds are available.

(d) *Appeals of insurance rate increases.* Any owner of a severe repetitive loss property may appeal the decision to increase the chargeable insurance premium rate as described in paragraph (c) of this section by submitting a written appeal, including supporting documentation that is postmarked or delivered to the appropriate FEMA Regional Administrator within 90 days of the date of the notice of the insurance increase. The increase in the amount of chargeable premium rate for flood insurance coverage for the property will be suspended pending the outcome of the appeal.

(1) Appeals must be based upon one or more of the following grounds. The property owner must include documentation to support each ground serving as a basis for the appeal:

(i) The offered mitigation activity is an acquisition and the property owner would be unable to purchase a replacement of the primary residence that is of comparable value and that is functionally equivalent. The property owner must document the actions taken to locate such replacement dwelling and demonstrate that no such dwelling is available.

(ii)(A) The amount of Federal funds offered for a mitigation activity, when combined with funds from the required non-Federal sources, would not cover the actual eligible costs of the mitigation activity contained in the mitigation offer, based on independent information. In the case of an acquisition, the purchase offer is not an accurate estimation of the market value of the property, based on independent information.

(B) For a mitigation activity other than acquisition, the property owner must submit independent estimates from professional engineers or registered architects to support this claim. For an acquisition, the property owner must submit an appraisal from a qualified appraiser to support this claim, and valuations will be considered by a review appraiser.

(iii) The offered mitigation activity would diminish the integrity of a historic district, site, building, or object's significant historic characteristics to the extent where the historic resource would lose its status as listed or eligible for inclusion on the National Register of Historic Places. The property owner must submit appropriate documentation from the State Historic Preservation Officer/ Tribal Historic Preservation Officer to support this claim.

(iv) For a multifamily property: Each of the flood insurance claims payments that served as the basis for its designation as a severe repetitive loss property must have resulted directly from the actions of a third party in violation of Federal, State, or local law, ordinance, or regulation. The property owner(s) must submit appropriate evidence, documentation, or data to support this claim.

(v) The property owner relied upon FEMA Flood Insurance Rate Maps (FIRMs) that were current at the time the property was purchased, and the effective FIRM and associated Flood Insurance Study (FIS) did not indicate that the property was located in an area having special flood hazards. The property owner must produce the dated FIRM and FIS in effect at the time the property was purchased to support this claim.

(vi) An alternative mitigation activity would be at least as cost effective as the offered mitigation activity. The property owner must submit documentation of the costs for a technically feasible and eligible alternative mitigation activity based on estimates from qualified appraisers, professional engineers, or registered architects, and information and documentation demonstrating the cost effectiveness using a FEMA approved methodology to support this claim.

(2) The FEMA Regional Administrator will conduct an initial review of each appeal that is filed on a timely basis to determine if the appeal complies with this section and includes sufficient documentation to be evaluated. The Regional Administrator may reject an appeal on initial review if it is made on

a basis other than those listed in paragraph (d)(1) of this section; if the property owner does not provide sufficient documentation, including, if applicable, supplemental information requested by the Regional Administrator by the deadline established by the Regional Administrator, which shall not exceed the timeframe described in paragraph (d) of this section; or if the appeal otherwise fails to comply with this section.

(3) If, upon initial review, the Regional Administrator determines that the basis for the offered mitigation activity was erroneous on its face and the appeal can be resolved in favor of the property owner, the appeal will be closed and no insurance increase will apply to the property. All other cases will be referred to the Administrator for assignment to an independent third party for review. The independent third party shall make a final determination on each appeal within 90 days of the date on which FEMA receives the appeal. As a low cost option, the property owner may request that the Administrator substitute a reviewer from FEMA's Alternative Dispute Resolution Office for the independent third party.

(4) A property owner who brings an appeal will be responsible for paying his/her attorneys' fees and costs to gather the necessary documentation and data to demonstrate the ground(s) for the appeal. Attorneys' fees and costs cannot be awarded by the independent third party.

(5) If the property owner prevails on appeal, the independent third party shall require the Administrator to charge the risk premium rate for flood insurance coverage of the property at the amount paid prior to the mitigation offer, as adjusted by any other premium adjustments otherwise applicable to the property. If the independent third party hearing the appeal is compensated for such service, the NFIF shall bear the costs of such compensation.

(6) If the property owner loses the appeal, the Administrator shall promptly increase the chargeable risk premium rate for flood insurance coverage of the property to the amount established pursuant to paragraph (c) of this section, and shall collect from the property owner the amount necessary to cover the stay of the applicability of such increased rates while the appeal was pending. If FEMA does not receive the additional premium by the date it is due, the amount of coverage will be reduced to match the amount of premium payment received. If the independent third party hearing the appeal is compensated for such service, the property owner shall bear the costs of such compensation.

§ 79.8 Allowable costs.

(a) *General.* General policies for determining allowable costs are addressed in §§ 13.4, 13.6, and 13.22 of this chapter. Allowable costs are explained in this paragraph.

(1) *Eligible Management Costs*—(i) Grantee. States are eligible to receive management costs consisting of a maximum of 10 percent of the planning and project activities awarded to the State, each fiscal year under FMA and SRL, respectively. These costs must be included in the application to FEMA. An Indian tribal government applying directly to FEMA is eligible for management costs consisting of a maximum of 10 percent of grants awarded for planning and project activities under the SRL and FMA programs respectively.

(ii) Subgrantee. Subapplicants may include a maximum of 5 percent of the total funds requested for their subapplication for management costs to support the implementation of their planning or project activity. These costs must be included in the subapplication to the State.

(2) *Indirect costs.* Indirect costs of administering the FMA and SRL programs are eligible as part of the 10 percent management costs for the grantee or the 5 percent management costs of the subgrantee, but in no case do they make the recipient eligible for additional management costs that exceed the caps identified in paragraph (a)(1) of this section. In addition, all costs must be in accordance with the provisions of part 13 of this chapter and Office of Management and Budget Circular A–87.

(b) *Pre-award costs.* FEMA may fund eligible pre-award planning or project costs at its discretion and as funds are available. Grantees and subgrantees may be reimbursed for eligible pre-award costs for activities directly related to the development of the project or planning proposal. These costs can only be incurred during the open application period of the respective grant program. Costs associated with implementation of the activity but incurred prior to grant award are not eligible. Therefore, activities where implementation is initiated or completed prior to award are not eligible and will not be reimbursed.

(c) *Duplication of benefits.* Grant funds may not duplicate benefits received by or available to applicants, subapplicants and project participants from insurance, other assistance programs, legal awards, or any other source to address the same purpose. Such individual or entity must notify the grantee and FEMA of all benefits that it receives or anticipates from other sources for the same purpose. FEMA will reduce the subgrant award by the amounts available for the same purpose from another source.

(d) *Negligence or other tortious conduct.* FEMA grant funds are not available where an applicant, subapplicant, other project participant, or third party's negligence or intentional actions contributed to the conditions to be mitigated. If the applicant, subapplicant, or project participant suspects negligence or other tortious conduct by a third party for causing such condition, they are responsible for taking all reasonable steps to recover all costs attributable to the tortious conduct of the third party. FEMA generally considers such amounts to be duplicated benefits available for the same purpose, and will treat them consistent with paragraph (c) of this section.

(e) FEMA grant funds are not available to satisfy or reimburse for legal obligations, such as those imposed by a legal settlement, court order, or State law.

§ 79.9 Grant administration.

(a) The Grantee must follow FEMA grant requirements, including submission of performance and financial status reports, and shall follow adequate competitive procurement procedures. In addition, grantees are responsible for ensuring that all subgrantees are aware of and follow the requirements contained in part 13 of this chapter.

(b) During the implementation of an approved grant, the State POC may find that actual costs are exceeding the approved award amount. While there is no guarantee of additional funding, FEMA will only consider requests made by the State POC to pay for such overruns if:

(1) Funds are available to meet the requested increase in funding;

(2) The amended grant award meets the cost-share requirements identified in this section; and

(3) The total amount obligated to the State does not exceed the maximum funding amounts set in § 79.4(a)(2).

(c) Grantees may use cost underruns from ongoing subgrants to offset overruns incurred by another subgrant(s) awarded under the same grant. All costs for which funding is requested must have been included in the original application's cost estimate.

(d) For all cost overruns that exceed the amount approved under the grant,

and which require additional Federal funds, the State POC shall submit a written request with a recommendation, including a justification for the additional funding to the Regional Administrator for a determination. If approved, the Regional Administrator shall increase the grant through an amendment to the original award document.

(e) At the time of closeout, FEMA will recapture any funds provided to a State or a community under these programs if the applicant has not provided the appropriate matching funds, the approved project has not been completed within the timeframes specified in the grant agreement, or the completed project does not meet the criteria specified in this part.

■ 9. Add part 80 to read as follows:

PART 80—PROPERTY ACQUISITION AND RELOCATION FOR OPEN SPACE

Subpart A—General

Sec.
80.1 Purpose and scope.
80.3 Definitions.
80.5 Roles and responsibilities.

Subpart B—Requirements Prior to Award

80.7 General.
80.9 Eligible and ineligible costs.
80.11 Project eligibility.
80.13 Application information.

Subpart C—Post-Award Requirements

80.15 General.
80.17 Project implementation.
80.19 Land use and oversight.

Subpart D—After the Grant Requirements

80.21 Closeout requirements.

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5206; the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; Homeland Security Act of 2002, 6 U.S.C. 101; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

Subpart A—General

§ 80.1 Purpose and scope.

This part provides guidance on the administration of FEMA mitigation assistance for projects to acquire property for open space purposes under all FEMA hazard mitigation assistance programs. It provides information on the eligibility and procedures for implementing projects for acquisition and relocation of at-risk properties from the hazard area to maintain the property for open space purposes. This part applies to property acquisition for open space project awards made under any FEMA hazard mitigation assistance program. This part supplements general program requirements of the funding grant program and must be read in conjunction with the relevant program regulations and guidance available at *http://www.fema.gov*. This part, with the exception of § 80.19 Land use and oversight, applies to projects for which the funding program application period opens or for which funding is made available pursuant to a major disaster declared on or after December 3, 2007. Prior to that date, applicable program regulations and guidance in effect for the funding program (available at *http://www.fema.gov*) shall apply. Section 80.19 Land use and oversight apply as of December 3, 2007 to all FEMA funded acquisitions for the purpose of open space.

§ 80.3 Definitions.

(a) Except as noted in this part, the definitions applicable to the funding program apply to implementation of this part. In addition, for purposes of this part:

(b) *Applicant* is the State or Indian tribal government applying to FEMA for a grant, and which will be accountable for the use of the funds.

(c) *Grantee* means the State or Indian tribal government to which FEMA awards a grant and which is accountable for the use of the funds provided. The grantee is the entire legal entity, even if only a particular component of the entity is designated in the grant award document.

(d) *Market Value* is generally defined as the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the property would have sold on the effective date of the valuation, after a reasonable exposure time on the open competitive market, from a willing and reasonably knowledgeable seller to a willing and reasonably knowledgeable buyer, with neither acting under any compulsion to buy or sell, giving due consideration to all available economic uses of the property at the time of the valuation.

(e) *National of the United States* means a person within the meaning of the term as defined in the Immigration and Nationality Act, 8 U.S.C. section 1101(a)(22).

(f) *Purchase offer* is the initial value assigned to the property, which is later adjusted by applicable additions and deductions, resulting in a final offer amount to a property owner.

(g) *Qualified alien* means a person within the meaning of the term as defined at 8 U.S.C. 1641.

(h) ''Qualified conservation organization'' means a qualified organization with a conservation purpose pursuant to 26 CFR 1.170A–14 and applicable implementing regulations, that is such an organization at the time it acquires the property interest and that was such an organization at the time of the major disaster declaration, or for at least 2 years prior to the opening of the grant application period.

(i) *Subapplicant* means the entity that submits an application for FEMA mitigation assistance to the State or Indian tribal applicant/grantee. With respect to open space acquisition projects under the Hazard Mitigation Grant Program (HMGP), this term has the same meaning as given to the term ''applicant'' in part 206, subpart N of this chapter. Upon grant award, the subapplicant is referred to as the subgrantee.

(j) *Subgrant* means an award of financial assistance made under a grantee to an eligible subgrantee.

(k) *Subgrantee* means the State agency, community, or Indian tribal government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

(l) *Administrator* means the head of the Federal Emergency Management Agency, or his/her designated representative, appointed under section 503 of the Post-Katrina Emergency Management Reform Act of 2006 (Pub. L. 109–295). The term also refers to the Director as discussed in part 2 of this chapter.

(m) *Regional Administrator* means the head of a Federal Emergency Management Agency regional office, or his/her designated representative, appointed under section 507 of the Post-Katrina Emergency Management Reform Act of 2006 (Pub. L. 109–295). The term also refers to Regional Directors as discussed in part 2 of this chapter.

§ 80.5 Roles and responsibilities.

The roles and responsibilities of FEMA, the State, the subapplicant/subgrantee, and participating property owners in the particular context of mitigation projects for the purpose of creating open space include the activities in this section. These are in addition to grants management roles and responsibilities identified in regulations and guidance of the program funding the project (available at *http://www.fema.gov*) and other responsibilities specified in this part.

(a) *Federal roles and responsibilities.* Oversee property acquisition activities undertaken under FEMA mitigation grant programs, including:

(1) Providing technical assistance to the applicant/grantee to assist in implementing project activities in compliance with this part;

(2) Reviewing applications for eligibility and compliance with this part;

(3) Reviewing proposals for subsequent transfer of a property interest and approving appropriate transferees;

(4) Making determinations on the compatibility of proposed uses with the open space purpose, in accordance with § 80.19;

(5) Complying with applicable Federal statutory, regulatory, and Executive Order requirements related to environmental and historic preservation compliance, including reviewing and supplementing, if necessary, environmental analyses conducted by the State and subgrantee in accordance with part 10 of this chapter;

(6) Providing no Federal disaster assistance, flood insurance claims payments, or other FEMA assistance with respect to the property or any open-space related improvements, after the property interest transfers; and

(7) Enforcing the requirements of this part and the deed restrictions to ensure that the property remains in open space use in perpetuity.

(b) *State (applicant/grantee) roles and responsibilities.* Serve as the point of contact for all property acquisition activities by coordinating with the subapplicant/subgrantee and with FEMA to ensure that the project is implemented in compliance with this part, including:

(1) Providing technical assistance to the subapplicant/subgrantee to assist in implementing project activities in compliance with this part;

(2) Ensuring that applications are not framed in a manner that has the effect of circumventing any requirements of this part;

(3) Reviewing the application to ensure that the proposed activity complies with this part, including ensuring that the property acquisition activities remain voluntary in nature, and that the subgrantee and property owners are made aware of such;

(4) Submitting to FEMA subapplications for proposed projects in accordance with the respective program schedule and programmatic requirements, and including all the requisite information to enable FEMA to determine the eligibility, technical feasibility, cost effectiveness, and environmental and historic preservation compliance of the proposed projects;

(5) Reviewing proposals for subsequent transfer of property interest and obtaining FEMA approval of such transfers; and ensuring that all uses proposed for the property are compatible with open space project purposes;

(6) Making no application for, nor providing, Federal disaster assistance or other FEMA assistance for the property or any open-space related improvements, after the property interest transfers;

(7) Enforcing the terms of this part and the deed restrictions to ensure that the property remains in open space use in perpetuity; and

(8) Reporting on property compliance with the open space requirements after the grant is awarded.

(c) *Subapplicant/Subgrantee roles and responsibilities.* Coordinate with the applicant/grantee and with the property owners to ensure that the project is implemented in compliance with this part, including:

(1) Submitting all applications for proposed projects in accordance with the respective program schedule and programmatic requirements, and including all the requisite information to enable the applicant/grantee and FEMA to determine the eligibility, technical feasibility, cost effectiveness, and environmental and historic preservation compliance of the proposed projects;

(2) Ensuring that applications are not framed in a manner that has the effect of circumventing any requirements of this part;

(3) Coordinating with the property owners to ensure they understand the benefits and responsibilities of participating in the project, including that participation in the project is voluntary, and that the property owner(s) are made aware of such;

(4) Developing the application and implementing property acquisition activities in compliance with this part, and ensuring that all terms of the deed restrictions and grant award are enforced;

(5) Ensuring fair procedures and processes are in place to compensate property owners and tenants affected by the purchase of property; such as determining property values and/or the amount of the mitigation offer, and reviewing property owner disputes regarding such offers;

(6) Making no application for Federal disaster assistance, flood insurance, or other FEMA benefits for the property or any open-space related improvements, after the property interest transfers;

(7) Taking and retaining full property interest, consistent with this part; or if transferring such interest, obtaining approval of the grantee and FEMA;

(8) Submitting to the grantee and FEMA proposed uses on the property for open space compatibility determinations; and

(9) Monitoring and reporting on property compliance after the grant is awarded.

(d) *Participating property owner roles and responsibilities.* Notify the subapplicant/subgrantee of its interest to participate, provide information to the subapplicant/subgrantee, and take all required actions necessary for the completion of the grant application and the implementation of property acquisition activities in accordance with this part.

Subpart B—Requirements Prior to Award

§ 80.7 General.

A project involving property acquisition or the relocation of structures for open space is eligible for hazard mitigation assistance only if the subapplicant meets the pre-award requirements set forth in this subpart. A project may not be framed in a manner that has the effect of circumventing the requirements of this subpart.

§ 80.9 Eligible and ineligible costs.

(a) *Allowable costs.* Eligible project costs may include compensation for the value of structures, for their relocation or demolition, for associated land, and associated costs. For land that is already held by an eligible entity, compensation for the land is not an allowable cost, but compensation for development rights may be allowable.

(b) *Pre-award costs.* FEMA may fund eligible pre-award project costs at its discretion and as funds are available. Grantees and subgrantees may be reimbursed for eligible pre-award costs for activities directly related to the development of the project proposal. These costs can only be incurred during the open application period of the respective grant program. Costs associated with implementation of the project but incurred prior to grant award are not eligible. Therefore, activities where implementation is initiated or completed prior to award are not eligible and will not be reimbursed.

(c) *Duplication of benefits.* Grant funds may not duplicate benefits received by or available to applicants, subapplicants and other project participants from insurance, other assistance programs, legal awards, or any other source to address the same purpose. Such individual or entity must notify the subapplicant and FEMA of all benefits that it receives, anticipates, or has available from other sources for the

same purpose. FEMA will reduce the subgrant award by the amounts available for the same purpose from another source.

(d) *Negligence or other tortious conduct.* FEMA acquisition funds are not available where an applicant, subapplicant, other project participant, or third party's negligence or intentional actions contributed to the conditions to be mitigated. If the applicant, subapplicant, or project participant suspects negligence or other tortious conduct by a third party for causing such condition, they are responsible for taking all reasonable steps to recover all costs attributable to the tortious conduct of the third party. FEMA generally considers such amounts to be duplicated benefits available for the same purpose, and will treat them consistent with paragraph (c) of this section.

(e) FEMA mitigation grant funds are not available to satisfy or reimburse for legal obligations, such as those imposed by a legal settlement, court order, or State law.

§ 80.11 Project eligibility.

(a) *Voluntary participation.* Eligible acquisition projects are those where the property owner participates voluntarily, and the grantee/subgrantee will not use its eminent domain authority to acquire the property for the open space purposes should negotiations fail.

(b) *Acquisition of improved properties.* Eligible properties are those with at-risk structures on the property, including those that are damaged or destroyed due to an event. In some cases, undeveloped, at-risk land adjacent to an eligible property with existing structures may be eligible.

(c) *Subdivision restrictions.* The land may not be subdivided prior to acquisition except for portions outside the identified hazard area, such as the Special Flood Hazard Area or any risk zone identified by FEMA.

(d) *Subapplicant property interest.* To be eligible, the subapplicant must acquire or retain fee title (full property interest) as part of the project implementation. A pass through of funds from an eligible entity to an ineligible entity must not occur.

(e) *Hazardous materials.* Eligible properties include only those that are not contaminated with hazardous materials, except for incidental demolition and household hazardous waste.

(f) *Open space restrictions.* Property acquired or from which a structure is removed must be dedicated to and maintained as open space in perpetuity consistent with this part.

§ 80.13 Application information.

(a) An application for acquisition of property for the purpose of open space must include:

(1) A photograph that represents the appearance of each property site at the time of application;

(2) Assurances that the subapplicant will implement the project grant award in compliance with subparts C and D of this part;

(3) The deed restriction language, which shall be consistent with the FEMA model deed restriction that the local government will record with the property deeds. Any variation from the model deed restriction language can only be made with prior approval from FEMA's Office of General Counsel;

(4) The documentation of voluntary interest signed by each property owner, which must include that the subapplicant has informed them in writing that it will not use its eminent domain authority for the open space purpose; and

(5) Assurance that the subject property is not part of an intended, planned, or designated project area for which the land is to be acquired by a certain date, and that local and State governments have no intention to use the property for any public or private facility in the future inconsistent with this part;

(6) If the applicant is offering pre-event value: certification that the property owner is a National of the United States or qualified alien; and

(7) Other information as determined by the Administrator.

(b) *Consultation regarding other ongoing Federal activities.* (1) The subapplicant must demonstrate that it has consulted with the United States Army Corps of Engineers (USACE) regarding the subject land's potential future use for the construction of a levee system. The subapplicant must also demonstrate that it has, and will, reject any future consideration of such use if it accepts FEMA assistance to convert the property to permanent open space.

(2) The subapplicant must demonstrate that it has coordinated with its State Department of Transportation to ensure that no future, planned modifications, improvements, or enhancements to Federal aid systems are under consideration that will affect the subject property.

(c) *Restriction on alternate properties.* Changes to the properties in an approved mitigation project will be considered by FEMA but not approved automatically. The subapplicant must identify the alternate properties in the project application and each alternate property must meet eligibility requirements in order to be considered.

Subpart C—Post-Award Requirements

§ 80.15 General.

A project involving property acquisition or the relocation of structures for open space must be implemented consistent with the requirements set forth in this subpart.

§ 80.17 Project implementation.

(a) *Hazardous materials.* The subgrantee shall take steps to ensure it does not acquire or include in the project properties contaminated with hazardous materials by seeking information from property owners and from other sources on the use and presence of contaminants affecting the property from owners of properties that are or were industrial or commercial, or adjacent to such. A contaminated property must be certified clean prior to participation. This excludes permitted disposal of incidental demolition and household hazardous wastes. FEMA mitigation grant funds may not be used for clean up or remediation of contaminated properties.

(b) *Clear title.* The subgrantee will obtain a title insurance policy demonstrating that fee title conveys to the subgrantee for each property to ensure that it acquires only a property with clear title. The property interest generally must transfer by a general warranty deed. Any incompatible easements or other encumbrances to the property must be extinguished before acquisition.

(c) *Purchase offer and supplemental payments.* (1) The amount of purchase offer is the current market value of the property or the market value of the property immediately before the relevant event affecting the property (''pre-event'').

(i) The relevant event for Robert T. Stafford Disaster Relief and Emergency Assistance Act assistance under HMGP is the major disaster under which funds are available; for assistance under the Pre-disaster Mitigation program (PDM) (42 U.S.C. 5133), it is the most recent major disaster. Where multiple disasters have affected the same property, the grantee and subgrantee shall determine which is the relevant event.

(ii) The relevant event for assistance under the National Flood Insurance Act is the most recent event resulting in a National Flood Insurance Program (NFIP) claim of at least $5000.

(2) For acquisition of properties under the Severe Repetitive Loss program under part 79 of this subchapter, the purchase offer is not less than the

greatest of the amount in paragraph (c)(1) of this section; the original purchase price paid by the participating property owner holding the flood insurance policy; or the outstanding amount of any loan to the participating property owner, which is secured by a recorded interest in the property at the time of the purchase offer.

(3) The grantee should coordinate with the subgrantee in their determination of whether the valuation should be based on pre-event or current market value. Generally, the same method to determine market value should be used for all participants in the project.

(4) A property owner who did not own the property at the time of the relevant event, or who is not a National of the United States or qualified alien, is not eligible for a purchase offer based on pre-event market value of the property. Subgrantees will ask each participating property owner to certify that they are either a National of the United States or qualified alien before offering pre-event market value for the property.

(5) Certain tenants who must relocate as a result of the project are entitled to relocation benefits under the Uniform Relocation Assistance and Real Property Acquisition Policies Act (such as moving expenses, replacement housing rental payments, and relocation assistance advisory services) in accordance with 49 CFR part 24.

(6) If a purchase offer for a residential property is less than the cost of the homeowner-occupant to purchase a comparable replacement dwelling outside the hazard-prone area in the same community, the subgrantee for funding under the Severe Repetitive Loss program implemented at part 79 of this subchapter shall make available a supplemental payment to the homeowner-occupant to apply to the difference. Subgrantees for other mitigation grant programs may make such a payment available in accordance with criteria determined by the Administrator.

(7) The subgrantee must inform each property owner, in writing, of what it considers to be the market value of the property, the method of valuation and basis for the purchase offer, and the final offer amount. The offer will also clearly state that the property owner's participation in the project is voluntary.

(d) *Removal of Existing Buildings.* Existing incompatible facilities must be removed by demolition or by relocation outside of the hazard area within 90 days of settlement of the property transaction. The FEMA Regional Administrator may grant an exception to this deadline only for a particular property based upon written justification if extenuating circumstances exist, but shall specify a final date for removal.

(e) *Deed Restriction.* The subgrantee, upon settlement of the property transaction, shall record with the deed of the subject property notice of applicable land use restrictions and related procedures described in this part, consistent with FEMA model deed restriction language.

§ 80.19 Land use and oversight.

This section applies to acquisitions for open space projects to address flood hazards. If the Administrator determines to mitigate in other circumstances, he/she will adapt the provisions of this section as appropriate.

(a) *Open space requirements.* The property shall be dedicated and maintained in perpetuity as open space for the conservation of natural floodplain functions.

(1) These uses may include: Parks for outdoor recreational activities; wetlands management; nature reserves; cultivation; grazing; camping (except where adequate warning time is not available to allow evacuation); unimproved, unpaved parking lots; buffer zones; and other uses FEMA determines compatible with this part.

(i) Allowable uses generally do not include: Walled buildings, levees, dikes, or floodwalls, paved roads, highways, bridges, cemeteries, landfills, storage of any hazardous or toxic materials, above or below ground pumping and switching stations, above or below ground storage tanks, paved parking, off-site fill or other uses that obstruct the natural and beneficial functions of the floodplain.

(ii) In the rare circumstances where the Administrator has determined competing Federal interests were unavoidable and has analyzed floodplain impacts for compliance with § 60.3 of this subchapter or higher standards, the Administrator may find only USACE projects recognized by FEMA in 2000 and improvements to pre-existing Federal-aid transportation systems to be allowable uses.

(2) No new structures or improvements will be built on the property except as indicated below:

(i) A public facility that is open on all sides and functionally related to a designated open space or recreational use;

(ii) A public restroom; or

(iii) A structure that is compatible with open space and conserves the natural function of the floodplain, which the Administrator approves in writing before the construction of the structure begins.

(3) Any improvements on the property shall be in accordance with proper floodplain management policies and practices. Structures built on the property according to paragraph (a)(2) of this section shall be floodproofed or elevated to at least the base flood level plus 1 foot of freeboard, or greater, if required by FEMA, or if required by any State or local ordinance, and in accordance with criteria established by the Administrator.

(4) After the date of property settlement, no Federal entity or source may provide disaster assistance for any purpose with respect to the property, nor may any application for such assistance be made to any Federal entity or source.

(5) The property is not eligible for coverage under the NFIP for damage to structures on the property occurring after the date of the property settlement, except for pre-existing structures being relocated off the property as a result of the project.

(b) *Subsequent transfer.* After acquiring the property interest, the subgrantee, including successors in interest, shall convey any interest in the property only if the Regional Administrator, through the State, gives prior written approval of the transferee in accordance with this paragraph.

(1) The request by the subgrantee, through the State, to the Regional Administrator must include a signed statement from the proposed transferee that it acknowledges and agrees to be bound by the terms of this section, and documentation of its status as a qualified conservation organization if applicable.

(2) The subgrantee may convey a property interest only to a public entity or to a qualified conservation organization. However, the subgrantee may convey an easement or lease to a private individual or entity for purposes compatible with the uses described in paragraph (a), of this section, with the prior approval of the Regional Administrator, and so long as the conveyance does not include authority to control and enforce the terms and conditions of this section.

(3) If title to the property is transferred to a public entity other than one with a conservation mission, it must be conveyed subject to a conservation easement that shall be recorded with the deed and shall incorporate all terms and conditions set forth in this section, including the easement holder's responsibility to enforce the easement. This shall be accomplished by one of the following means:

(i) The subgrantee shall convey, in accordance with this paragraph, a conservation easement to an entity other than the title holder, which shall be recorded with the deed, or

(ii) At the time of title transfer, the subgrantee shall retain such conservation easement, and record it with the deed.

(4) Conveyance of any property interest must reference and incorporate the original deed restrictions providing notice of the conditions in this section and must incorporate a provision for the property interest to revert to the subgrantee or grantee in the event that the transferee ceases to exist or loses its eligible status under this section.

(c) *Inspection.* FEMA, its representatives and assigns, including the grantee shall have the right to enter upon the property, at reasonable times and with reasonable notice, for the purpose of inspecting the property to ensure compliance with the terms of this part, the property conveyance and of the grant award.

(d) *Monitoring and reporting.* Every 3 years the subgrantee (in coordination with any current successor in interest) through the grantee, shall submit to the FEMA Regional Administrator a report certifying that the subgrantee has inspected the property within the month preceding the report, and that the property continues to be maintained consistent with the provisions of this part, the property conveyance and the grant award.

(e) *Enforcement.* The subgrantee, grantee, FEMA, and their respective representatives, successors and assigns, are responsible for taking measures to bring the property back into compliance if the property is not maintained according to the terms of this part, the conveyance, and the grant award. The relative rights and responsibilities of FEMA, the grantee, the subgrantee, and subsequent holders of the property interest at the time of enforcement, shall include the following:

(1) The grantee will notify the subgrantee and any current holder of the property interest in writing and advise them that they have 60 days to correct the violation.

(i) If the subgrantee or any current holder of the property interest fails to demonstrate a good faith effort to come into compliance with the terms of the grant within the 60-day period, the grantee shall enforce the terms of the grant by taking any measures it deems appropriate, including but not limited to bringing an action at law or in equity in a court of competent jurisdiction.

(ii) FEMA, its representatives, and assignees may enforce the terms of the grant by taking any measures it deems appropriate, including but not limited to 1 or more of the following:

(A) Withholding FEMA mitigation awards or assistance from the State and subgrantee; and current holder of the property interest.

(B) Requiring transfer of title. The subgrantee or the current holder of the property interest shall bear the costs of bringing the property back into compliance with the terms of the grant; or

(C) Bringing an action at law or in equity in a court of competent jurisdiction against any or all of the following parties: the grantee, the subgrantee, and their respective successors.

Subpart D—After the Grant Requirements

§ 80.21 Closeout requirements.

Upon closeout of the grant, the subgrantee, through the grantee, shall provide FEMA, with the following:

(a) A copy of the deed recorded for each property, demonstrating that each property approved in the original application was mitigated and that the deed restrictions recorded are consistent with the FEMA model deed restriction language to meet the requirements of this part;

(b) A photo of each property site after project completion;

(c) The latitude-longitude coordinates of each property site;

(d) Identification of each property as a repetitive loss property, if applicable; and

(e) Other information as determined by the Administrator.

PART 201—MITIGATION PLANNING

■ 10. The authority citation for part 201 is revised to read as follows:

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5206; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; Homeland Security Act of 2002, 6 U.S.C. 101; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

■ 11. Section 201.2 is amended by revising the definition of ''Hazard Mitigation Grant Program'' and by adding the following definitions to the alphabetical list of definitions:

§ 201.2 Definitions.

Administrator means the head of the Federal Emergency Management Agency, or his/her designated representative, appointed under section 503 of the Post-Katrina Emergency Management Reform Act of 2006 (Pub. L. 109–295). The term also refers to the Director as discussed in part 2 of this chapter.

Flood Mitigation Assistance (FMA) means the program authorized by section 1366 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4104c, and implemented at parts 78 and 79.

* * * * *

Hazard Mitigation Grant Program (HMGP) means the program authorized under section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5170c, and implemented at part 206, subpart N of this chapter.

* * * * *

Pre-Disaster Mitigation Program (PDM) means the program authorized under section 203 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5133.

* * * * *

Repetitive Flood Claims (RFC) program means the program authorized under section 1323 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4011, which provides funding to reduce flood damages to individual properties for which 1 or more claim payments for losses have been made under flood insurance coverage and that will result in the greatest savings to the National Flood Insurance Program (NFIP) in the shortest period of time.

Severe Repetitive Loss (SRL) program means the program authorized under section 1361(a) of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4102a, and implemented at part 79 of this chapter.

Severe Repetitive Loss properties are defined as single or multifamily residential properties that are covered under an NFIP flood insurance policy and:

(1) That have incurred flood-related damage for which 4 or more separate claims payments have been made, with the amount of each claim (including building and contents payments) exceeding $5,000, and with the cumulative amount of such claims payments exceeding $20,000; or

(2) For which at least 2 separate claims payments (building payments only) have been made under such coverage, with cumulative amount of such claims exceeding the market value of the property.

(3) In both instances, at least 2 of the claims must be within 10 years of each

other, and claims made within 10 days of each other will be counted as 1 claim.

* * * * *

■ 12. Revise paragraphs (c)(1), (c)(3), (d)(2) and (e) of § 201.3 to read as follows:

§ 201.3 Responsibilities.

* * * * *

(c) * * *

(1) Prepare and submit to FEMA a Standard State Mitigation Plan following the criteria established in § 201.4 as a condition of receiving non-emergency Stafford Act assistance and FEMA mitigation grants. In addition, a State may choose to address severe repetitive loss properties in their plan as identified in § 201.4(c)(3)(v) to receive the reduced cost share for the Flood Mitigation Assistance (FMA) and Severe Repetitive Loss (SRL) programs, pursuant to § 79.4(c)(2) of this chapter.

* * * * *

(3) At a minimum, review and update the Standard State Mitigation Plan every 3 years from the date of the approval of the previous plan in order to continue program eligibility.

* * * * *

(d) * * *

(2) At a minimum, review and update the local mitigation plan every 5 years from date of plan approval of the previous plan in order to continue program eligibility.

(e) *Indian tribal governments.* The key responsibilities of the Indian tribal government are to coordinate all tribal activities relating to hazard evaluation and mitigation and to:

(1) Prepare and submit to FEMA a Tribal Mitigation Plan following the criteria established in § 201.7 as a condition of receiving non-emergency Stafford Act assistance as a grantee. This plan will also allow Indian tribal governments to apply through the State, as a subgrantee, for any FEMA mitigation project grant. Indian tribal governments with a plan approved by FEMA on or before October 1, 2008 under § 201.4 or § 201.6 will also meet this planning requirement. All Tribal Mitigation Plans approved after that date must follow the criteria identified in § 201.7. In addition, an Indian tribal government may choose to address severe repetitive loss properties as identified in § 201.4(c)(3)(v) as a condition of receiving the reduced cost share for the FMA and SRL programs, pursuant to § 79.4(c)(2) of this chapter.

(2) Review and update the Tribal Mitigation Plan at least every 5 years from the date of approval of the previous plan in order to continue program eligibility.

(3) In order to be considered for the increased HMGP funding, the Tribal Mitigation Plan must meet the Enhanced State Mitigation Plan criteria identified in § 201.5. The plan must be reviewed and updated at least every 3 years from the date of approval of the previous plan.

■ 13. Revise paragraphs (a) and (c)(7) and add paragraph (c)(3)(v) of § 201.4 to read as follows:

§ 201.4 Standard State Mitigation Plans.

(a) *Plan requirement.* States must have an approved Standard State Mitigation Plans meeting the requirements of this section as a condition of receiving non-emergency Stafford Act assistance and FEMA mitigation grants. Emergency assistance provided under 42 U.S.C. 5170a, 5170b, 5173, 5174, 5177, 5179, 5180, 5182, 5183, 5184, 5192 will not be affected. Mitigation planning grants provided through the Pre-disaster Mitigation (PDM) program, authorized under section 203 of the Stafford Act, 42 U.S.C. 5133, will also continue to be available. The mitigation plan is the demonstration of the State's commitment to reduce risks from natural hazards and serves as a guide for State decision makers as they commit resources to reducing the effects of natural hazards.

* * * * *

(c) * * *

(3) * * *

(v) A State may request the reduced cost share authorized under § 79.4(c)(2) of this chapter for the FMA and SRL programs, if it has an approved State Mitigation Plan meeting the requirements of this section that also identifies specific actions the State has taken to reduce the number of repetitive loss properties (which must include severe repetitive loss properties), and specifies how the State intends to reduce the number of such repetitive loss properties. In addition, the plan must describe the strategy the State has to ensure that local jurisdictions with severe repetitive loss properties take actions to reduce the number of these properties, including the development of local mitigation plans.

* * * * *

(7) *Assurances.* The plan must include assurances that the State will comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding, in compliance with 44 CFR 13.11(c) of this chapter. The State will amend its plan whenever necessary to reflect changes in State or Federal statutes and regulations as required in 44 CFR 13.11(d) of this chapter.

* * * * *

■ 14. Revise paragraphs (a)(1), (a)(2), (c)(2)(ii) introductory text, (d)(1), and (d)(3) and add a sentence to the end of paragraph (c)(3)(ii) of § 201.6 to read as follows:

§ 201.6 Local Mitigation Plans.

* * * * *

(a) * * *

(1) A local government must have a mitigation plan approved pursuant to this section in order to receive HMGP project grants. The Administrator may, at his discretion, require a local mitigation plan for the Repetitive Flood Claims Program. A local government must have a mitigation plan approved pursuant to this section in order to apply for and receive mitigation project grants under all other mitigation grant programs.

(2) Plans prepared for the FMA program, described at part 79 of this chapter, need only address these requirements as they relate to flood hazards in order to be eligible for FMA project grants. However, these plans must be clearly identified as being flood mitigation plans, and they will not meet the eligibility criteria for other mitigation grant programs, unless flooding is the only natural hazard the jurisdiction faces.

* * * * *

(c) * * *

(2) * * *

(ii) A description of the jurisdiction's vulnerability to the hazards described in paragraph (c)(2)(i) of this section. This description shall include an overall summary of each hazard and its impact on the community. All plans approved after October 1, 2008 must also address NFIP insured structures that have been repetitively damaged by floods. The plan should describe vulnerability in terms of:

* * * * *

(3) * * *

(ii) * * * All plans approved by FEMA after October 1, 2008, must also address the jurisdiction's participation in the NFIP, and continued compliance with NFIP requirements, as appropriate.

* * * * *

(d) * * *

(1) Plans must be submitted to the State Hazard Mitigation Officer (SHMO) for initial review and coordination. The State will then send the plan to the appropriate FEMA Regional Office for formal review and approval. Where the State point of contact for the FMA program is different from the SHMO, the SHMO will be responsible for

coordinating the local plan reviews between the FMA point of contact and FEMA.

* * * * *

(3) A local jurisdiction must review and revise its plan to reflect changes in development, progress in local mitigation efforts, and changes in priorities, and resubmit it for approval within 5 years in order to continue to be eligible for mitigation project grant funding.

* * * * *

■ 15. Add § 201.7 to read as follows:

§ 201.7 Tribal Mitigation Plans.

The Indian Tribal Mitigation Plan is the representation of the Indian tribal government's commitment to reduce risks from natural hazards, serving as a guide for decision makers as they commit resources to reducing the effects of natural hazards.

(a) *Plan requirement.* (1) Indian tribal governments applying to FEMA as a grantee must have an approved Tribal Mitigation Plan meeting the requirements of this section as a condition of receiving non-emergency Stafford Act assistance and FEMA mitigation grants. Emergency assistance provided under 42 U.S.C. 5170a, 5170b, 5173, 5174, 5177, 5179, 5180, 5182, 5183, 5184, 5192 will not be affected. Mitigation planning grants provided through the PDM program, authorized under section 203 of the Stafford Act, 42 U.S.C. 5133, will also continue to be available.

(2) An Indian tribal government may choose to address severe repetitive loss properties in their plan, as identified in § 201.4(c)(3)(v), to receive the reduced cost share for the FMA and SRL programs.

(3) Indian tribal governments applying through the State as a subgrantee must have an approved Tribal Mitigation Plan meeting the requirements of this section in order to receive HMGP project grants. The Administrator, at his discretion may require a local mitigation plan for the Repetitive Flood Claims Program. A tribe must have an approved Tribal Mitigation Plan in order to apply for and receive FEMA mitigation project grants, under all other mitigation grant programs.

(4) Multi-jurisdictional plans (*e.g.* county-wide or watershed plans) may be accepted, as appropriate, as long as the Indian tribal government has participated in the process and has officially adopted the plan. Indian tribal governments must address all the elements identified in this section to ensure eligibility as a grantee or as a subgrantee.

(b) An effective planning process is essential in developing and maintaining a good plan. The mitigation planning process should include coordination with other tribal agencies, appropriate Federal agencies, adjacent jurisdictions, interested groups, and be integrated to the extent possible with other ongoing tribal planning efforts as well as other FEMA mitigation programs and initiatives.

(c) *Plan content.* The plan shall include the following:

(1) Documentation of the *planning process* used to develop the plan, including how it was prepared, who was involved in the process, and how the public was involved. This shall include:

(i) An opportunity for the public to comment on the plan during the drafting stage and prior to plan approval, including a description of how the Indian tribal government defined ''public;''

(ii) As appropriate, an opportunity for neighboring communities, tribal and regional agencies involved in hazard mitigation activities, and agencies that have the authority to regulate development, as well as businesses, academia, and other private and nonprofit interests to be involved in the planning process;

(iii) Review and incorporation, if appropriate, of existing plans, studies, and reports; and

(iv) Be integrated to the extent possible with other ongoing tribal planning efforts as well as other FEMA programs and initiatives.

(2) A *risk assessment* that provides the factual basis for activities proposed in the strategy to reduce losses from identified hazards. Tribal risk assessments must provide sufficient information to enable the Indian tribal government to identify and prioritize appropriate mitigation actions to reduce losses from identified hazards. The risk assessment shall include:

(i) A description of the type, location, and extent of all natural hazards that can affect the tribal planning area. The plan shall include information on previous occurrences of hazard events and on the probability of future hazard events.

(ii) A description of the Indian tribal government's vulnerability to the hazards described in paragraph (c)(2)(i) of this section. This description shall include an overall summary of each hazard and its impact on the tribe. The plan should describe vulnerability in terms of:

(A) The types and numbers of existing and future buildings, infrastructure, and critical facilities located in the identified hazard areas;

(B) An estimate of the potential dollar losses to vulnerable structures identified in paragraph (c)(2)(i)(A) of this section and a description of the methodology used to prepare the estimate;

(C) A general description of land uses and development trends within the tribal planning area so that mitigation options can be considered in future land use decisions; and

(D) Cultural and sacred sites that are significant, even if they cannot be valued in monetary terms.

(3) A *mitigation strategy* that provides the Indian tribal government's blueprint for reducing the potential losses identified in the risk assessment, based on existing authorities, policies, programs and resources, and its ability to expand on and improve these existing tools. This section shall include:

(i) A description of mitigation goals to reduce or avoid long-term vulnerabilities to the identified hazards.

(ii) A section that identifies and analyzes a comprehensive range of specific mitigation actions and projects being considered to reduce the effects of each hazard, with particular emphasis on new and existing buildings and infrastructure.

(iii) An action plan describing how the actions identified in paragraph (c)(2)(ii) of this section will be prioritized, implemented, and administered by the Indian tribal government.

(iv) A discussion of the Indian tribal government's pre- and post-disaster hazard management policies, programs, and capabilities to mitigate the hazards in the area, including: An evaluation of tribal laws, regulations, policies, and programs related to hazard mitigation as well as to development in hazard-prone areas; and a discussion of tribal funding capabilities for hazard mitigation projects.

(v) Identification of current and potential sources of Federal, tribal, or private funding to implement mitigation activities.

(vi) An Indian tribal government may request the reduced cost share authorized under § 79.4(c)(2) of this chapter of the FMA and SRL programs if they have an approved Tribal Mitigation Plan meeting the requirements of this section that also identify actions the Indian tribal government has taken to reduce the number of repetitive loss properties (which must include severe repetitive loss properties), and specifies how the Indian tribal government intends to

reduce the number of such repetitive loss properties.

(4) A *plan maintenance process* that includes:

(i) A section describing the method and schedule of monitoring, evaluating, and updating the mitigation plan.

(ii) A system for monitoring implementation of mitigation measures and project closeouts.

(iii) A process by which the Indian tribal government incorporates the requirements of the mitigation plan into other planning mechanisms such as reservation master plans or capital improvement plans, when appropriate.

(iv) Discussion on how the Indian tribal government will continue public participation in the plan maintenance process.

(v) A system for reviewing progress on achieving goals as well as activities and projects identified in the mitigation strategy.

(5) *Plan Adoption Process.* The plan must be formally adopted by the governing body of the Indian tribal government prior to submittal to FEMA for final review and approval.

(6) *Assurances.* The plan must include assurances that the Indian tribal government will comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding, in compliance with § 13.11(c) of this chapter. The Indian tribal government will amend its plan whenever necessary to reflect changes in tribal or Federal laws and statutes as required in § 13.11(d) of this chapter.

(d) *Plan review and updates.* (1) Plans must be submitted to the appropriate FEMA Regional Office for formal review and approval. Indian tribal governments who would like the option of being a subgrantee under the State must also submit their plan to the State Hazard Mitigation Officer for review and coordination.

(2) The Regional review will be completed within 45 days after receipt from the Indian tribal government, whenever possible.

(3) Indian tribal governments must review and revise their plan to reflect changes in development, progress in local mitigation efforts, and changes in priorities, and resubmit it for approval within 5 years in order to continue to be eligible for non-emergency Stafford Act assistance and FEMA mitigation grant funding, with the exception of the Repetitive Flood Claims program.

PART 206–FEDERAL DISASTER ASSISTANCE

■ 16. The authority citation for part 206 continues to read as follows:

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5206; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; Homeland Security Act of 2002, 6 U.S.C. 101; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

■ 17. Section 206.432 is amended by revising paragraphs (b) introductory text and (b)(1) to read as follows:

§ 206.432 Federal grant assistance.

* * * * *

(b) *Amounts of Assistance.* The total Federal contribution of funds is based on the estimated aggregate grant amount to be made under 42 U.S.C. 5170b, 5172, 5173, 5174, 5177, 5178, and 5183 of the Stafford Act for the major disaster (less associated administrative costs), and shall be as follows:

(1) *Standard percentages.* Not to exceed 15 percent for the first $2,000,000,000 or less of such amounts; not to exceed 10 percent of the portion of such amounts over $2,000,000,000 and not more than $10,000,000,000; and not to exceed 7.5 percent of the portion of such amounts over $10,000,000,000 and not more than $35,333,000,000.

* * * * *

■ 18. Section 206.433 is amended by revising paragraph (c) to read as follows:

§ 206.433 State responsibilities.

* * * * *

(c) *Hazard Mitigation Officer.* The State must appoint a Hazard Mitigation Officer who serves as the responsible individual for all matters related to the Hazard Mitigation Grant Program.

* * * * *

■ 19. Revise paragraphs (a)(2), (c)(5)(ii), (e) introductory text; add a sentence after the first sentence of (d)(2); remove paragraph (f); and redesignate current paragraphs (g) and (h) as (f) and (g) of § 206.434 to read as follows:

§ 206.434 Eligibility.

(a) * * *

(2) Private nonprofit organizations that own or operate a private nonprofit facility as defined in § 206.221(e). A qualified conservation organization as defined at § 80.3(h) of this chapter is the only private nonprofit organization eligible to apply for acquisition or relocation for open space projects;

* * * * *

(c) * * *

(5) * * *

(ii) Will not cost more than the anticipated value of the reduction in both direct damages and subsequent negative impacts to the area if future disasters were to occur,

* * * * *

(d) * * *

(2) * * * Activities for which implementation has already been initiated or completed are not eligible for funding. * * *

* * * * *

(e) *Property acquisitions and relocation requirements.* Property acquisitions and relocation projects for open space proposed for funding pursuant to a major disaster declared on or after December 3, 2007 must be implemented in accordance with part 80 of this chapter. For major disasters declared prior to December 3, 2007, a project involving property acquisition or the relocation of structures and individuals is eligible for assistance only if the applicant enters into an agreement with the FEMA Regional Director that provides assurances that:

* * * * *

■ 20. Add new paragraph (c) to §206.439 to read as follows:

§ 206.439 Allowable costs.

* * * * *

(c) *Pre-award costs.* FEMA may fund eligible pre-award planning or project costs at its discretion and as funds are available. Grantees and subgrantees may be reimbursed for eligible pre-award costs for activities directly related to the development of the project or planning proposal. These costs can only be incurred during the open application period of the grant program. Costs associated with implementation of the activity but incurred prior to grant award are not eligible. Therefore, activities where implementation is initiated or completed prior to award are not eligible and will not be reimbursed.

Dated: October 24, 2007.

Harvey E. Johnson, Jr.,

Deputy Administrator/Chief Operating Officer, Federal Emergency Management Agency.

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Part III

Small Business Administration

13 CFR Part 120
Lender Oversight Program; Proposed Rule

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

RIN 3245–AE14

Lender Oversight Program

AGENCY: Small Business Administration (SBA).

ACTION: Notice of Proposed Rulemaking.

SUMMARY: SBA is proposing a rule to incorporate SBA's risk-based lender oversight program into SBA regulations. Specifically, the proposed rule would establish the role and responsibilities of SBA's Office of Credit Risk Management within a new subpart of the business loan regulations. It would codify in SBA regulations SBA's process of risk-based oversight including: (i) Accounting and reporting requirements; (ii) off-site reviews/monitoring; (iii) on-site reviews and examinations; and iv) capital adequacy requirements. The proposed rule would also list the types of, grounds for, and procedures governing SBA enforcement actions within consolidated enforcement regulations for all 7(a) Lenders, Certified Development Companies, Microloan Intermediaries, and Non-Lending Technical Assistance Providers. This rule is necessary to provide coordinated and effective oversight of financial institutions that originate and manage SBA guaranteed loans.

DATES: Comments must be received on or before December 31, 2007.

ADDRESSES: You may submit comments, identified by [RIN number 3245–AE14] by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Bryan Hooper, Director for Office of Credit Risk Management, U.S. Small Business Administration, 409 3rd Street, SW., 8th Floor, Washington, DC 20416.
- *Hand Delivery/Courier:* Bryan Hooper, Director for Office of Credit Risk Management, U.S. Small Business Administration, 409 3rd Street, SW., 8th Floor, Washington, DC 20416.

All comments will be posted on *http://www.Regulations.gov.* If you wish to include within your comment, confidential business information (CBI) as defined in the Privacy and Use Notice/User Notice at *http://www.Regulations.gov* and you do not want that information disclosed, you must submit the comment by either Mail or Hand Delivery and you must address the comment to the attention of Linda RU.S.C.he, Supervisory Financial Analyst, Office of Credit Risk Management. In the submission, you must highlight the information that you consider is CBI and explain why you believe this information should be held confidential. SBA will make a final determination, in its sole discretion, of whether the information is CBI and, therefore, will not be published or not.

FOR FURTHER INFORMATION CONTACT: Linda RU.S.C.he, Supervisory Financial Analyst, at (816) 426.4860, or Bryan Hooper, Director, Office of Credit Risk Management, (202) 205.3049.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory

Section 7(a) of the Small Business Act (the Act), 15 U.S.C. 636, authorizes SBA to guarantee loans made by Lenders (7a Lenders) to eligible small businesses. Under Section 504 of the Small Business Investment Act, 15 U.S.C. 697a, SBA guarantees Certified Development Company (CDC) debentures. Section 7(m) of the Act authorizes SBA to make direct loans to Microloan Intermediaries, who use proceeds to make loans to very small businesses, and also authorizes SBA to make technical assistance grants to non-lending technical assistance providers (NTAPs). 15 U.S.C. 636(m). With this authority to offer government guarantees and related grants, Congress has also provided SBA with authority to support appropriate Lender, CDC, Microloan Intermediary, and NTAP supervision. 15 U.S.C. 650; 15 U.S.C. 634 note, citing Public Law 104–208, Division D, Title I, § 103(h); 15 U.S.C. 634(b)(14); 15 U.S.C. 634(b)(7); 15 U.S.C. 636(a)(31); 15 U.S.C. 687(f); 15 U.S.C. 696(3)(A); 15 U.S.C. 697(a)(2); 15 U.S.C. 697e(c)(8); and 15 U.S.C. 634(b)(6).

The provisions cited include both direct and indirect authority to supervise, regulate, and examine Small Business Lending Companies (SBLCs) and Non-Federally Regulated Lenders (NFRLs). 15 U.S.C. 650; 15 U.S.C. 634(b)(14); 15 U.S.C. 636(a)(31); and 15 U.S.C. 634(b)(6) and (7). The cites also include both direct and indirect provisions that, together, authorize SBA oversight of and reviews of the SBA operations of other 7(a) Lenders (including national banks and other federally regulated financial institutions), CDCs, Microloan Intermediaries, and NTAPs. 15 U.S.C. 634 note, citing Public Law 104–208, Division D, Title I, § 103(h); 15 U.S.C. 634(b)(14); 15 U.S.C. 634(b)(6) and (7); 15 U.S.C. 636(a)(31); 15 U.S.C. § 687(f); 15 U.S.C. 696(3)(A); 15 U.S.C. 697(a)(2); and 15 U.S.C. 697e(c)(8).

B. History

Currently, there are over 5,000 7(a) Lenders and CDC s (together, SBA Lenders) authorized to make SBA-guaranteed loans and issue SBA-guaranteed debentures. These SBA Lenders hold approximately $60 billion of 7(a) and 504 loans outstanding (in gross dollars). SBA has delegated increasingly more authority to its SBA Lenders such that the number of loans originated under delegated authority has grown from approximately 20% of SBA's loan volume in 1992 to over 75% of SBA's loan volume as of 2006. As SBA continues to place more responsibility and independence on its SBA Lenders, SBA must have the necessary controls to ensure that SBA Lenders' SBA operations are well-managed and avoid unnecessary losses. A comprehensive oversight process provides this control for the Agency.

Prior to 1999, SBA's risk management, lender monitoring, and lender oversight activities were conducted by SBA's Office of Financial Assistance (OFA) and SBA's District Offices, which were also responsible for developing and promoting the Agency's business loan programs. With the increase in lending authority given to SBA Lenders and lending volume, SBA needed a separate division to perform risk management and lender oversight.

Therefore, in 1999 SBA established the Office of Lender Oversight (OLO) for the primary purpose of ensuring the ''consistent and appropriate supervision of SBA's lending partners.'' At the time it was initially established, OLO's major responsibilities were defined as: ''evaluating existing oversight regulations, policies and procedures and promulgating new ones where appropriate; monitoring changes in the accounting, banking and financial industries, and recommending appropriate modification of SBA oversight policy; coordinating all headquarters and field office activities with respect to Lender reviews; [and] evaluating new programs and changes to existing programs to assess their risk potential * * *'' The head of the office, the Associate Administrator for OLO, was to serve as a member of SBA's Risk Management Committee and a key member of the group developing and implementing the Agency's lender monitoring and oversight system.

Subsequent to its establishment, OLO assumed responsibility for conducting ''safety and soundness'' examinations of the SBLCs and compliance reviews for Preferred Lenders Program (PLP) Lenders. OLO then began developing a risk-based review process for all SBA

Lenders. OLO, in 2003, developed and implemented a Loan and Lender Monitoring System (L/LMS). In late 2004, Congress provided SBA specific supervision and enforcement authorities over SBLCs and NFRLs (together, SBA Supervised Lenders). In April 2005, SBA published Delegations of Authority that delineated the responsibilities of OLO and a new Lender Oversight Committee (LOC) consistent with new authorities. 70 FR 21262 (April 25, 2005). On May 5, 2007, SBA published a final rule governing 7(a) Lender review/examination fees. 72 FR 25189. On May 16, 2007 OLO published a final rule on SBA's Lender Risk Rating System. 72 FR 27611. Also, in May 2007, SBA reorganized and renamed the office to the Office of Credit Risk Management (OCRM). Most recently, SBA has reviewed the Agency's current oversight regulations and is now proposing this rule to incorporate OCRM's new authorities and SBA's risk-based lender oversight program into SBA's regulations. A discussion of the proposed rule, consisting of an overview and key provisions, follows.

II. Proposal

A. Overview

The proposed rule would incorporate SBA's risk management/lender oversight program into SBA's business loan program regulations by: (i) Adding risk management definitions to Part 120 (13 CFR 120.10); (ii) incorporating risk management/lender oversight metrics and tools into program participation criteria and requirements (13 CFR 120.410, 120.424, 120.433, 120.434, 120.451, 120.710, 120.812, 120.820, 120.826, 120.830, 120.839, and 120.841); (iii) updating provisions to include key OCRM Delegations of Authority (13 CFR 120.451, 120.461, 120.702, 120.710, and 120.845); and (iv) consolidating loan program oversight and enforcement regulations into subpart I, designated Risk-Based Lender Oversight. (See below chart on Regulations Relocated). Subpart I would cover the role and responsibilities of OCRM, the Risk Rating System, off-site reviews/monitoring, on-site reviews and examinations, and enforcement actions against SBA Lenders, Microloan Intermediaries, and NTAPs.

CHART OF REGULATIONS RELOCATED

Current regulatory citation	Regulation subject matter	Proposed regulatory citation
§ 120.414	SBA access to 7(a) Lender files	§ 120.1010.
§ 120.415	7(a) program—Suspension or revocation of eligibility to participate.	§ 120.1400 (grounds). § 120.1500 (types of enforcement actions). § 120.1600 (enforcement procedures).
§ 120.442	Suspension or revocation of CLP status	§ 120.1400 (grounds). § 120.1500 (types of enforcement actions). § 120.1600 (enforcement procedures).
§ 120.454	PLP performance review	§ 120.1000(a) (Risk-Based Lender Oversight). § 120.1025 (off-site reviews/monitoring). § 120.1050 (on-site reviews and examinations).
§ 120.455	Suspensions or revocations of PLP status	§ 120.1400 (grounds). § 120.1500 (types of enforcement actions). § 120.1600 (enforcement procedures).
§ 120.470(b)(3)	Minimum SBLC capital requirement	§ 120.471 (minimum capital requirement). § 120.472 (higher individual minimum capital requirement). § 120.473 (procedures for higher individual minimum capital requirement).
§ 120.470(b)(4)	SBLC capital impairment	§ 120.462(d).
§ 120.470(b)(5)	SBLC issuance of securities	§ 120.471(d).
§ 120.470(b)(6)	SBLC voluntary capital reduction	§ 120.471(c).
§ 120.470(b)(7)	SBLC reserve for losses	§ 120.463(e).
§ 120.470(b)(8)	SBLC internal controls	§ 120.460(b).
§ 120.470(b)(9)	SBLC dual control	§ 120.470(d).
§ 120.470(b)(10)	SBLC fidelity insurance	§ 120.470(e).
§ 120.470(b)(11)	SBLC common control	§ 120.470(f).
§ 120.470(b)(12)	SBLC management	§ 120.470(g).
§ 120.470(b)(13)	SBLC borrowed funds	§ 120.470(h).
§ 120.471	SBLC recordkeeping and retention requirements	§ 120.461.
§ 120.473	SBLC change of control	§ 120.475.
§ 120.474	SBLC prohibited financing	§ 120.476.
§ 120.475	SBLC Audits	§ 120.490.
§ 120.476	SBLC suspension and revocation	§ 120.1400 (grounds). § 120.1500 (types of enforcement actions). § 120.1600 (enforcement procedures).
§ 120.716	Microloan Intermediary and NTAP suspension and revocation.	§ 120.1425 (grounds). § 120.1540 (types of enforcement actions). § 120.1600 (enforcement procedures).
§ 120.853	CDC reviews	§ 120.1000, § 120.1050.
§ 120.854	CDC grounds for taking enforcement action	§ 120.1400 (grounds).
§ 120.855	CDC types of enforcement actions	§ 120.1500 (types of enforcement actions).
§ 120.856	CDC enforcement procedures	§ 120.1600 (enforcement procedures).

Chart: This chart is intended to serve as a reference tool for locating regulatory provisions repositioned under the proposed rule. In some instances, the relocation involves simply moving text from one regulatory section to another. In other instances, SBA is proposing substantive changes with the move.

B. Key Provisions

The following is a discussion of key provisions of the proposed rule. They are as follows: (i) SBA Supervised Lender regulation; (ii) capital regulation; (iii) incorporation of a risk rating system; (iv) the addition of the CDC Single Audit Act provision; (v) the codification of the risk-based on-site review and examination program; and (vi) the coordination and development of enforcement policies and procedures. These key provisions are highlighted because they generally cover more than one regulation within the proposed rule. In addition, their discussion will provide a useful background for regulation review.

1. SBA Supervised Lender Regulation

Public Law 108–447, Division K, Title I (December 2004) effectively created a new category of SBA Lender—an SBA Supervised Lender. SBA Supervised Lenders consist of SBLCs and NFRLs. P.L 108–447 generally treated these 7(a) Lenders the same for purposes of regulation, supervision, and enforcement. Accordingly, SBA has drafted a group of regulations applicable to SBA Supervised Lenders in general (§§ 120.460–120.465). The SBA Supervised Lender regulations would cover for example; internal controls, record retention, accounting and reporting, and capital adequacy. Many of these new regulations governing SBA Supervised Lenders, especially those related to capital, are similar to that of either the Federal Deposit Insurance Corporation; the Federal Reserve Board; the Office of the Comptroller of the Currency; the Office of Thrift Supervision; the National Credit Union Administration; or the Farm Credit Administration (each a Federal Financial Institution Regulator).

2. Capital Regulation

Essential to the success of a government guaranteed loan program is the financial strength of its lenders. Capital is a common metric for measuring financial strength. The proposed rule would incorporate capital more fully into the 7(a) program. Specifically, the proposed rule would explicitly make having sufficient permanent capital a requirement for 7(a) program participation (§ 120.410(a)). For 7(a) Lenders with a Federal Financial Institution Regulator, meeting capital requirements for an adequately capitalized financial institution would be considered sufficient permanent capital to support SBA lending activities. For SBA Supervised Lenders, adequate capital would mean meeting its minimum capital requirement (For an SBLC—this would mean meeting SBA's § 120.471 minimum or § 120.472 higher individual minimum capital requirement, as applicable. For an NFRL—this would mean meeting the minimum capital requirement set by its state of incorporation regulator). While the proposed rule does not revise the minimum capital requirement for all SBLCs, SBA is considering updating this requirement. SBA seeks comments as to the appropriate minimum capital requirement for SBLCs.

In addition to an SBLC minimum capital requirement, the proposed regulations would allow SBA to set a higher individual minimum capital requirement for an SBLC, where appropriate. (§ 120.472). SBA would set such a higher minimum capital requirement after consideration of certain risk-related factors described in proposed § 120.472 and pursuant to procedures contained in proposed § 120.473. The proposed rule would also require SBA Supervised Lenders to maintain a minimum capital adequacy plan (§ 120.462(b)), and to quarterly certify as to compliance with minimum capital requirements. (§ 120.462(c)). Capital impairment would be redefined under the proposed rule for SBA Supervised Lenders, as failing to meet its applicable minimum capital requirement. (§ 120.462(d)). Under the proposed rule, if an SBA Supervised Lender fails to meet its minimum capital requirement (*i.e.*, is capitally impaired), it must file with SBA a capital restoration plan (§ 120.462(e)) and then timely implement the approved plan. SBA could take enforcement action under the proposed enforcement regulations (§§ 120.1400–1600) against an SBA Supervised Lender that fails to submit a capital restoration plan that is acceptable to SBA or fails to implement, in any material respect, its capital restoration plan in a timely manner. The proposed capital regulations contain provisions similar to those maintained by some Federal Financial Institution Regulators.

3. Incorporation of a Risk Rating System

With the assistance of private industry leaders in predictive modeling and risk rating systems, SBA has developed an SBA Lender Risk Rating System. The proposed SBA Lender Risk Rating System was published for comment in the **Federal Register** at 71 FR 25624 (May 1, 2006). On May 16, 2007 OLO published the final rule on SBA's Lender Risk Rating System. 72 FR 27611. The SBA Lender Risk Rating System is an internal tool for assessing the risk of each SBA Lender's SBA loan operations on a uniform basis within its program and for identifying those institutions whose SBA loan operations and portfolio require additional SBA monitoring or other action. Under the SBA Lender Risk Rating System, SBA assigns each SBA Lender a composite rating of one to five based on certain portfolio performance factors which may be overridden in some cases due to SBA Lender specific factors that may be indicative of a higher or lower level of risk. SBA would generally consider an SBA assigned Risk Rating (Risk Rating) of either one, two, or three on a scale of one to five to be an ''Acceptable Risk Rating''. A ''Less Than Acceptable Risk Rating'' would be an SBA assigned Risk Rating of four or five. (§ 120.10 and § 120.1015). SBA may revise the scale for SBA Risk Ratings and related definitions as the program develops. Any such changes would be published in the **Federal Register** for notice and comment. SBA plans to develop a risk rating system for Microloan Intermediaries and NTAPs and will provide notice before implementation of this system.

SBA has incorporated the SBA Lender Risk Rating System into its on-site risk-based reviews and examinations as set forth in SOP 51–00 governing on-site SBA Lender reviews and examinations. The proposed rule would incorporate the SBA Lender Risk Rating System and its definitions into SBA's loan program regulations. Risk Ratings would be considered in determining whether an SBA Lender (and, in the future, a Microloan Intermediary, or NTAP) has satisfactory SBA performance for purposes of continued participation in the 7(a), 504, Microloan, or NTAP programs (including the delegated authority programs) under proposed amendments to: §§ 120.410 (requirements for 7(a) Lenders); 120.424 (securitization requirements); 120.433 (sales and sales of participating interests); 120.434 (pledges of SBA loans); 120.451 (PLP Program); 120.812 (Extensions of CDC probationary periods and permanent CDC status); 120.820 (requirements for CDC certifications and operation); 120.839 (outside area of operation loan approval); and 120.841 (ALP status). SBA would also consider a Risk Rating before approving a Microloan Intermediary's reduction in its loan loss reserve fund (LLRF) under proposed amendments to § 120.710. Under proposed § 120.1051, SBA would consider an SBA Lender's, Intermediary's, or NTAP's Risk Rating in determining frequency of on-site reviews/examinations.

Under proposed rule § 120.1400(c)(9), a repeated Less Than Acceptable Risk Rating (particularly in conjunction with other grounds) may evidence increased financial risk to SBA to warrant consideration of taking formal enforcement action. A repeated Less Than Acceptable Risk Rating may also be evidence of an SBA Lender not performing underwriting, closing, disbursing, servicing, liquidation, or litigation in a commercially reasonable and prudent manner under proposed § 120.1400(c)(4). SBA expects to consider additional factors (e.g., on-site review/examination assessment, corrective actions implemented, and contribution toward SBA mission) before taking formal enforcement action on these Risk Rating grounds. Finally, a repeated Less Than Acceptable Risk Rating could be support for SBA not renewing program or delegated authorities.

The incorporation of the Risk Rating System into the regulations is consistent with SBA's movement away from considering only the lagging indicators of our portfolio benchmark performance measures and towards integration of more current and sophisticated performance measurement systems developed by private sector leaders.

4. Single Audit Act Provisions

The proposed rule incorporates Single Audit Act requirements into SBA's 504 program regulations. The Single Audit Act (31 U.S.C. 7501–7507) requires Non-Federal entities, such as non-profit CDCs, that expend a total of $500,000 or more of federal awards (e.g. loan guarantees) in any fiscal year (including amounts outstanding), to have a single audit performed for such fiscal year. The audit must be conducted by an independent auditor in accordance with generally accepted government auditing standards. The Single Audit Act may also require, under certain circumstances, the Non-Federal entity to monitor the subrecipients' use of federal awards through site visits, limited scope audits, and other means. By including reference to the Single Audit Act in SBA regulations, SBA would not intend to extend coverage of the Single Audit Act to those CDCs for which the Single Audit Act does not apply. Therefore, for example, if a CDC does not meet the $500,000 federal award minimum, then the Single Audit Act compliance requirement would not apply. However, SBA estimates that virtually all active CDCs are covered by the Single Audit Act. SBA also would intend to consider CDC compliance with the Single Audit Act, including any future amendments to it, as a requirement for participation in the 504 program and, accordingly would monitor CDC compliance with Single Audit Act requirements.

5. Review and Examination Program

SBA has developed a coordinated risk-based SBA Lender review and examination program. SBA regulations need to reflect the updated coordinated risk-based review/examination approach. The proposed rule would remove current regulatory provisions governing on-site reviews and examinations within SBA's loan program regulations (§§ 120.414, 120.454, 120.470, 120.853) and consolidate them within subpart I on Risk-Based Lender Oversight. Under the proposed regulations, SBA Lenders could now look in one location for consistent regulatory guidance on on-site reviews and examinations. In addition, the proposed rule would extend such guidance beyond regulatory authorization for reviews and examinations. Specifically, the proposed rule would include provisions for off-site reviews and monitoring, on-site review and examination evaluative components, the frequency of on-site reviews and examinations, review and examination reports, and expected responses, including, as applicable, corrective actions and capital restoration plans. As to the proposed regulation's on-site reviews, if an SBA Lender is to be examined by a Federal Financial Institution Regulator in the same general timeframe, SBA would try to mutually coordinate the timing of the SBA operation review and the supervisor's examination to minimize any burden. Finally, the proposed rule also would include Microloan Intermediaries and NTAPs in the review regulations, and would harmonize the review process between for-profit 7(a) Lenders and non-profit CDCs, since SBA's partial guaranty of credit risk on individual loans for each program is similar.

6. Enforcement Policies and Procedures

SBA has consolidated within subpart I, the Agency's enforcement regulations for SBA Lenders, Microloan Intermediaries, and NTAPs. The consolidation would facilitate coordinated enforcement policies. It would allow all SBA Lenders, Microloan Intermediaries, and NTAPs to look in one place for such regulatory guidance. Finally, consolidation within subpart I should provide for greater consistency in taking formal enforcement actions.

SBA has modeled its proposed enforcement provisions after SBA's CDC enforcement regulations. Like the current CDC enforcement regulations, subpart I's enforcement provisions would consist primarily of three main enforcement regulations. The first, proposed § 120.1400, would cover grounds for enforcement actions. The second, proposed § 120.1500, would list types of formal enforcement actions. The third, proposed § 120.1600, would set forth the procedures governing each type of formal enforcement action. Within each of these proposed regulations, the subsections are generally broken down into provisions that apply to all SBA Lenders; additional provisions that apply only to 7(a) Lenders; additional provisions that apply only to SBA Supervised Lenders; additional provisions that apply only to SBLCs; and additional provisions that apply only to CDCs.

Enforcement grounds and formal enforcement actions for Microloan Intermediaries and NTAPs would be contained in separate regulations within the enforcement series, as there was less overlap with these participants.

III. Section-by-Section Analysis

Section 120.10—Definitions. SBA proposes to add ten new definitions to this section primarily for purposes of risk management/lender oversight and enforcement. The new definitions would help to clarify categories of SBA Lenders and related parties referenced in the proposed regulations. Definitions would be added for 7(a) Lender, SBA Lender, Small Business Lending Company (SBLC), Non-Federally Regulated Lender (NFRL), SBA Supervised Lender, Other Regulated SBLC, Federal Financial Institutions Regulator, and Management Official. SBA would also add Risk Rating definitions that would describe an SBA Risk Rating and the key rating categories of Acceptable and Less Than Acceptable.

Section 120.410—Requirements for all participating Lenders. Under the proposed rule, the requirement in section 120.410(a) that a 7(a) Lender have the continuing ability to evaluate, process, close, disburse, service, liquidate, (and litigate) loans would be more specifically defined to include (but not be limited to) (i) holding sufficient permanent capital (For Lenders with Federal Financial Institution Regulators, that would entail being ''adequately capitalized.'' For SBLCs, that would entail meeting its SBA minimum capital requirement. For NFRLs, that would entail meeting the minimum capital requirement of its state of incorporation) and (ii) having satisfactory SBA performance. SBA is more specifically defining the

continuing ability provision to include adequate capital and satisfactory SBA performance because sufficient capital and satisfactory performance sustain a 7(a) Lender's ability to evaluate, process, close, disburse, service, liquidate, and litigate loans.

In determining satisfactory SBA performance, SBA would consider a Lender's Risk Rating, among other factors. The other factors SBA anticipates considering may include on-site review/examination assessments, historical performance measures (like default rate, purchase rate and loss rate), loan volume to the extent that it impacts performance measures, other performance related measurements and information, and contribution toward SBA mission.

Subsection (a) would also be revised to specify the requirement that a 7(a) Lender have the ability to litigate loans. This is consistent with SBA's policy on 7(a) Lender litigation of SBA Loans.

In addition, the OCRM proposed rule would further define SBA's requirements to participate in the 7(a) program by adding the following 7(a) Lender requirements: (i) Good standing (as generally defined under § 120.420(f) and with a Lender's state banking regulator and/or Federal Financial Institution Regulator, as applicable); (ii) safe and sound condition; and (iii) use of commercially reasonable lending policies, procedures, and standards employed by prudent lenders. For SBA Supervised Lenders, safe and sound condition would be determined by SBA. For other 7(a) Lenders, SBA would look to a 7(a) Lender's Federal Financial Institution Regulator or state banking regulator, as applicable, to ensure safe and sound condition.

Finally, subsection (d) would be clarified to provide that a 7(a) Lender must be supervised and examined by either a Federal Financial Institution Regulator, a state banking regulator (satisfactory to SBA) or SBA. SBA is clarifying this provision to make clear that a 7(a) Lender participating in SBA's program must be supervised and examined by a banking regulator, satisfactory to SBA. The clarifications and revisions proposed for § 120.410 are intended to minimize losses in the 7(a) program.

Sections 120.420(f)—Participating lender financings, definition of ''Good Standing''; 120.425(c)(2)—Reinstatement of securitizer PLP status; and 120.426—Actions SBA would take if SBA securitizer transfers tranche prior to holding period. SBA proposes to change the determining authority in these provisions from the Securitization Committee to the more recently established Lender Oversight Committee (LOC). Proposed changes to § 120.420(f) would also specify the LOC's discretion in reviewing an SBA Lender's good-standing in certain circumstances involving investigations, indictments, convictions, and judgments, to be consistent with the LOC's discretion set forth in 120.420(f)(4). Finally, SBA proposes to add the words ''In general'' to its ''good-standing'' definition to underscore the discretionary nature of the ''good-standing'' determination.

Sections 120.424—What are the basic conditions a Lender must meet to securitize; 120.433—What are SBA's other requirements for sales and sales of participating interests; and 120.434—What are SBA's requirements for loan pledges? SBA is revising the requirements in these sections to more explicitly reference the ''good standing'' definition in § 120.420(f). SBA is also proposing to add the requirement that 7(a) Lenders have satisfactory SBA performance as determined by SBA and that Risk Ratings would be considered among other factors in determining satisfactory SBA performance. SBA expects to consider among the other factors, on-site review/examination assessments, historical performance measures like default rate, purchase rate and loss rate, other performance-related measures and information, and contribution toward SBA mission. This change would incorporate SBA's Risk Rating System within SBA's securitization and other conveyance regulations.

Section 120.435—Which loan pledges do not require notice to or consent by SBA? SBA proposes to update the cross-reference to ''§ 120.434(e)'' within this section consistent with proposed revisions to § 120.434.

Section 120.451—How does a Lender become a PLP Lender? SBA is proposing to amend § 120.451 to add satisfactory SBA performance to those items SBA would consider in approving PLP status. Subsection (e) on PLP recertification would also be amended to include SBA performance (including contribution to SBA mission), a Lender's Risk Rating, examination and review results, and other risk-related factors in the recertification decision. Section 120.451 would also be amended to provide that the recertification decision would be made by the appropriate Office of Capital Access official in accordance with Delegations of Authority. Also, SBA proposes to delete current subsections (c) and (f) to conform to existing Agency policy as published in Notice 5000–989 dated May 2, 2006 governing PLP territories. Finally, these additions incorporate lender oversight and related performance metrics and OCRM's Delegations of Authority into PLP program participation determinations.

Section 120.460—What are SBA's additional requirements for SBA Supervised Lenders? SBA is proposing a new § 120.460 entitled ''What are SBA's additional requirements for SBA Supervised Lenders?'' In addition to complying with SBA's requirements for 7(a) Lenders, an SBA Supervised Lender would be required to meet additional requirements set forth in § 120.460 and the sections that follow. Under § 120.460, SBA would require an SBA Supervised Lender to adopt an internal control policy that would provide adequate direction for establishing effective control over and accountability for operations, programs, and resources. An SBA Supervised Lender that is required to maintain an adequate internal control program may be more likely to self-identify and self-correct operational deficiencies. Proposed § 120.460 is similar to a Federal Financial Institution Regulator internal control provision in Title 12 of the Code of Federal Regulations.

Section 120.461—What are SBA's additional requirements for filing SBA Supervised Lender reports with SBA and for record retention? This proposed regulation would require that SBA Supervised Lender specific reports be filed with the appropriate Office of Capital Access official in accordance with Delegations of Authority. This is consistent with current Delegations of Authority. This section would also extend the recordkeeping requirements for SBLCs to NFRLs. Record retention is required for SBA to be able to perform safety and soundness examinations or Lender reviews and to monitor that SBLC licensing requirements are maintained. Finally, this proposed section would newly specify certain time periods for retrieving certain documents (i.e., 1 day for documents that must be immediately retrievable and 15 days for originals of documents that are stored electronically). Consequently, an SBA Supervised Lender must be able to produce needed records when required, and within a reasonable period of time, as defined here.

Section 120.462—What are SBA's additional requirements on capital maintenance for SBA Supervised Lenders? A financial institution is expected to maintain capital commensurate with its existing and potential risk exposure and the ability of management to identify, measure, monitor, and control exposures. Given this, many SBA Supervised Lenders do,

and should be expected to, maintain capital levels above specified minimums. Therefore, SBA is proposing a new § 120.462 which would guide SBA Supervised Lenders to maintain their own capital adequacy goals and plans, typically at a level above SBA's minimum. The provision would also provide guidance as to factors an SBA Supervised Lender should consider in determining the total amount of capital needed to assure the SBA Supervised Lender's continued financial viability and to provide for any necessary growth.

Given the importance of maintaining adequate capital, the proposed rule would further require that all SBA Supervised Lenders, within 45 days of the end of each fiscal quarter, furnish SBA with a calculation of its compliance with its minimum regulatory capital requirement. Under proposed § 120.462(c), SBA would require the SBA Supervised Lender's chief financial officer to certify the calculation as correct.

Section 120.462 would extend to NFRLs SBA's requirement to timely notify SBA in writing of capital impairment. Under proposed § 120.462(d), SBA would redefine capital impairment as any failure by an SBA Supervised Lender to meet its minimum capital requirements. SBA is proposing this revision to provide SBA early notice of a Supervised Lender's deteriorating capital position below required minimums. Unless otherwise waived by SBA in writing, an SBA Supervised Lender would be prohibited from presenting any loans to SBA for guarantee until the capital impairment is cured.

Finally, the proposed rule would require an SBA Supervised Lender that fails to meet its minimum capital requirement to submit a capital restoration plan. Proposed subsection (e) would detail the plan content, how SBA would respond, amendments to the capital plan, and consequences of failure to: (i) Submit an acceptable plan within the required timeframe or (ii) implement in any material respect an approved capital restoration plan within the plan timeframe.

Section 120.463—Regulatory accounting. To facilitate accurate and reliable financial reporting, the proposed rule contains a new § 120.463 on regulatory accounting. The proposed regulation would require that an SBA Supervised Lender's (i) books and records be kept on an accrual basis in accordance with Generally Accepted Accounting Principles (GAAP) as supplemented by Regulatory Accounting Principles (RAP) and (ii) financial statements be audited annually in accordance with generally accepted auditing standards by an independent certified public accountant experienced in auditing financial institutions.

Proposed subsection (d) would require an SBA Supervised Lender that discharges its auditor to notify SBA within ten days of discharge and provide SBA with the name, address, and telephone number of the discharged auditor. If the discharge involved a dispute over the financial statements, the SBA Supervised Lender would also have to provide additional information, including but not limited to, a detailed reason for the discharge and the effect of each party's position on the financial statements.

Proposed subsection (e) would extend the SBLC requirement for maintenance of an allowance for losses on loans to NFRLs. Under proposed § 120.463(e), an SBA Supervised Lender would be required to maintain documentation of its loan loss allowance calculations and analysis in sufficient detail to permit the SBA to review assumptions used and their application. SBA would also require, under subsection (e) that the unguaranteed portions of loans identified as uncollectible be charged off promptly. If the portion determined to be uncollectible by the SBA Supervised Lender would differ from that determined by its auditors or the SBA, the SBA Supervised Lender would be required to charge-off such amount as the SBA may direct. Each SBA Supervised Lender would also be required to classify loans as nonaccrual or formally restructured in accordance with stated guidelines. Under the proposed subsection, if one loan to a given borrower would be classified as nonaccrual or formally restructured, all loans to that borrower would be required to be so classified unless the SBA Supervised Lender could document that the loans have independent sources of repayment.

Finally, § 120.463, subsection (f), would require that SBA Supervised Lenders account for loan sales transactions and the valuation of loan servicing rights in accordance with GAAP. At the end of each quarter, assumptions used in the valuation would be reviewed by the SBA Supervised Lender for reasonableness in the existing environment. In evaluating the assumptions, the SBA Supervised Lender would be required to give particular attention to interest rate and repayment rate assumptions. Assumptions considered no longer reasonable would be required to be modified and reflected in the valuation and would have to be documented and supported by a market analysis. Under subsection (f), SBA could require an SBA Supervised Lender to use industry averages for the valuation of servicing rights, in lieu of any other assumptions found unacceptable by SBA.

Section 120.464—Reports to SBA. Proposed § 120.464 would extend to NFRLs, SBA's current SBLC reporting requirements covering audited financial statements, administrative and legal proceedings, reports to stockholders, summaries of changes (in organization and financing), stock pledges, and other reports, as listed in current § 120.472.

Proposed § 120.464 would also clarify current reporting requirements by, for example, detailing required statements to accompany the Annual Report (audited financial statements); inserting filing time requirements where presently not stated (Stockholder Report and Report of Changes); detailing the form and format of financial reporting (*e.g.* for Annual Reports, Quarterly Condition Reports, and Reporting of Changes—to be in accord with GAAP, include footnotes, and utilize accrual accounting), and specifying that any legal or administrative proceedings must be included in other required reporting (*e.g.*, Annual Report, Quarterly Condition Report, any Capital plan report, etc.) until such matter is resolved.

Proposed § 120.464 would also introduce two additional SBA Supervised Lender reports: (i) The Quarterly Condition Report and (ii) the Reports of Changes in Financial Condition. SBA Supervised Lenders would report quarterly financial status in Quarterly Condition Reports. The Quarterly Condition Report under proposed § 120.464 would contain quarterly financial statements that could be internally prepared and which would likely include the required certification of compliance with capital requirements under proposed § 120.462(c). Reports of Changes in Financial Condition would report material changes in an SBA Supervised Lender's financial condition (such as unanticipated reductions in asset values due to unanticipated events such as natural disasters or uninsured hazard loss). Generally, SBA would require the SBA Supervised Lender to file the Report of Changes in Financial Condition within 10 days of becoming aware of such a material financial change, except in cases of capital impairment which would be 30 days from the month-end in which the impairment occurred, in accordance with proposed § 120.462(d), as clearly specified in the Regulation language. These two financial reports would result in timelier financial reporting.

Subsection (c) would require that SBA Supervised Lenders certify each report of financial condition (*e.g.*, the Quarterly Condition Report, the Changes in Financial Condition Report and the Annual Report) as having been prepared in accordance with applicable regulations and instructions and to be a true, accurate, and complete representation of the SBA Supervised Lender's financial condition and performance. Accurate financial reporting is essential to an institution's safety and soundness. Reliable financial reports are necessary for an SBA Supervised Lender to raise capital. They provide data to stockholders and potential investors on the company's financial position and results of operations. Such information is critical to effective market discipline. Accurate financial information also enables management to effectively manage the institution's risks and make sound business decisions. Further, the compilation and submission of accurate financial information on a regular basis in a consistent format allows SBA to perform more timely and effective risk-based supervision to support examination functions, off-site monitoring, assessments of an institution's capital adequacy and financial strength, and comparisons between SBA Supervised Lenders.

Finally, proposed § 120.464 would provide for a waiver provision for any reporting requirement for good cause. Good cause may include, but is not limited to, where an SBA Supervised Lender has a relatively small SBA loan portfolio, consistently-acceptable Risk Ratings, portfolio performance that exceeds SBA's portfolio or peer group averages, etc. This waiver would be determined by SBA, in its sole discretion. In making this determination based on portfolio size, SBA expects to consider the value of the report to SBA given the size of SBA Supervised Lender's SBA loan portfolio and relative to other SBA Supervised Lender's portfolios individually and in the aggregate and other risk related factors. Authority for such actions will be in accordance with SBA's Delegations of Authority.

Section 120.465—Civil penalty for late submission of required reports. Congress recognized the importance of reporting to effective oversight and legislated civil monetary penalties of up to $5,000 per day for SBA Supervised Lenders that fail to meet reporting requirements (15 U.S.C. 650(j)). Proposed § 120.465 would codify in SBA regulations the statutory civil monetary penalties. The proposed regulation would provide that penalties would automatically accrue from the report due date until the SBA Supervised Lender submits a complete report. If a submitted report is not complete, it would be deemed not filed for purposes of civil monetary penalty assessment. Under the proposed rule, if SBA discovers after the due date (*e.g.*, during an examination) that the report was submitted only in part or was not filed, penalties would be assessed dating back to the original due date. Finally, proposed § 120.465 would provide procedures for requesting: (i) Due date extension and waiver of automatic penalty up to a new due date, (ii) reduction or exemption from the automatic penalty, and (iii) reconsideration of SBA decisions on extensions and reductions/exemptions and would include factors that would be considered in the SBA approval (*e.g.* determination of reasonable cause such as natural disaster or other conditions beyond the control of management, that failure was not due to willful neglect, demonstration of modified internal procedures to comply with reporting in the future, etc.). SBA seeks comments on the factors SBA would consider as discussed in the proposed rule.

Section 120.470—What is an SBLC? As part of the rewrite of the SBLC regulations, SBA is proposing to amend the title and certain content of current § 120.470. Under the proposed rule, the subject matter in several provisions of § 120.470 would be moved elsewhere in Part 120 (See Chart of Regulations Relocated in the Proposal section of the preamble) and some remaining provisions would be updated, reorganized, or expanded. Updates would include, for example: The addition of limited liability companies and limited partnerships as allowable business structures; an increase to $2 million for required Fidelity Bond insurance; incorporation of new definitions of 7(a) Lender and Intermediary into subsection (a)(2) on lending requirements; a statement on SBA's policy on capitalization with borrowed funds. The Fidelity Bond increase would update the insurance requirements consistent with the current maximum loan amount that SBA can guarantee. SBA would expand guidance, in particular, on SBA's policy against capitalization with borrowed funds. Borrowed funds may result in a weaker capital position of the SBLC due to the potential for required repayment. SBA would also expand guidance in the proposed subsection on common control—providing terms and definitions, requirements for divestitures, and a clearer statement on common control and presumptions.

Section 120.471, 120.472, 120.473, and 120.474—SBLC minimum capital requirements. SBA sets SBLC capital standards pursuant to 15 U.S.C. 650(a)(2) and 15 U.S.C. 634(b)(7) in conjunction with 15 U.S.C. 636. Proposed §§ 120.471 through 120.474 would govern SBLC minimum capital standards. Proposed § 120.471 would state SBA's baseline minimum capital standard for SBLCs. Under proposed § 120.471, the baseline would remain at the current level stated in § 120.470(b)(3). However, SBA is considering revising the baseline minimum capital standard and seeks comments on the appropriate minimum capital level.

Proposed § 120.471 would provide more detailed guidance on those items that SBA would include in calculating an SBLC's capital under the capital requirement. The capital calculation would generally consist of the following items: (i) Common stock; (ii) preferred stock that is non-cumulative as to dividends and does not have a maturity; (iii) additional paid-in-capital for stock in excess of the par value; (iv) retained earnings; and (v) for limited liability companies and limited partnerships, those capital contributions that are not subject to repayment at any specific time, are not subject to withdrawal and have no cumulative priority return. The inclusion of retained earnings and limitations on preferred stock in the proposed rule is consistent with Federal Financial Institution Regulator policies.

In some cases, SBA may determine that the baseline minimum capital formula may not be sufficient to support the risk associated with a particular SBLC's portfolio. Consequently, proposed § 120.472 would provide that SBA may require a higher individual minimum capital requirement for an SBLC. Proposed § 120.472 would provide examples of risk-related factors that SBA might consider in making that determination. An SBLC individual minimum capital requirement would be established pursuant to procedures set forth in proposed § 120.473 or through written agreement or a cease and desist proceeding as stated in proposed § 120.474. The proposed individual minimum capital requirement procedures are similar to those provided by some Federal Financial Institution Regulators.

Finally, the SBLC capital regulations would include a change in policy for approving issuances of securities (currently in § 120.470(b)(5) and proposed in § 120.471(d)). The proposed provisions would delete the last part of

current § 120.470(b)(5). This deletion would have the effect of making it a requirement for an SBLC to obtain prior written approval for issuances of common stock, including issuances for cash or direct obligations of or obligations fully guaranteed as to principal and interest by the United States government. This is consistent in general with SBA's policy of prior approval for other types of financings (*e.g.* warehouse lines, participations, and securitizations). For further information on proposed rule capital provisions see the Capital Regulation provision in the Proposal section of the preamble.

Section 120.475—Change of ownership or control. SBA proposes to relocate current § 120.473 governing change of ownership and control for SBLCs to § 120.475. In addition, the proposed rule would shift approval authority from the D/FA to the appropriate Office of Capital Access official in accordance with Delegations of Authority to reflect changes in internal agency procedure. Further, if a transfer of ownership or control is subject to approval of any State or Federal chartering, licensing, or other regulatory authority, copies of any documents filed with such authority would also have to be transmitted to the appropriate Office of Capital Access official in accordance with Delegations of Authority.

Section 120.630—Qualifications to be a Pool Assembler. SBA proposes to add an additional requirement applicable only to SBA Lenders. Specifically, SBA would require SBA Lenders seeking to become a Pool Assembler to have satisfactory SBA performance, as determined by SBA. SBA would consider an SBA Lender's Risk Rating, among other factors, in determining satisfactory SBA performance. The other factors that SBA anticipates considering may include on-site review/examination assessments, historical performance measures (*e.g.*, default rate, purchase rate, and loss rate), loan volume to the extent that it impacts performance measures, and other performance related measurements and information. SBA considers these factors as relevant to the expected performance of a Pool Assembler. SBA is revising this regulation to incorporate SBA loan program performance for SBA Lenders/pool assemblers into pool assembler eligibility criteria.

Section 120.702—Limitations on where an Intermediary may operate? Current § 120.702 provides that Microloan Intermediaries may operate in only one state unless SBA determines that it would be in the best interests of the small business community for it to operate across state lines. The proposed rule would shift approval authority for expansions from the D/FA to the appropriate Office of Capital Access official in accordance with Delegations of Authority to reflect changes in internal agency procedure.

Section 120.710(c) and (d)—Microloan Intermediary Loan Loss Reserve Fund (LLRF) approval authority. SBA proposes amending § 120.710(c) and (d) to shift approval authority for a reduction in the LLFR calculation from the D/FA to the appropriate Office of Capital Access official in accordance with Delegations of Authority. This revision would reflect changes in internal agency procedure.

Sections 120.710(e)(1), 120.812, 120.820, 120.839, and 120.841—Microloan Intermediary LLRF reduction and selected CDC authority criteria. SBA proposes amending §§ 120.710(e)(1) (Microloan Intermediary reduction of LLRF); 120.812 (Extension of CDC probationary periods and permanent CDC status); 120.820 (Requirements for CDC certification and operation); 120.839 (Outside area of operation loan approval); and 120.841 (ALP status), to incorporate that SBA would consider an Intermediary's or SBA Lender's performance (which will include its Risk Rating, among other factors) in making determinations under these regulations. SBA expects to consider in determining satisfactory SBA performance on-site review assessments; historical performance measures; loan volume to the extent that it impacts performance measures; other performance related measurements and information, and contribution toward SBA mission. Proposed § 120.841(c) (ALP status) would also add the requirement that an ALP CDC must have a risk-based review assessment of ''acceptable'' or ''acceptable with corrective actions required'' to be considered for ALP status.

Section 120.826—Basic requirements for operating a CDC. The proposed rule adds to § 120.826 internal control requirements similar to those proposed for SBA Supervised Lenders. Under the proposed rule, a CDC would be required to adopt an internal control policy to include maintenance of a loan review program, in conjunction with its SBA-guaranteed debenture financings. In addition, a CDC would have to have its financial statements annually audited by an independent certified public accountant since this would establish consistency in application of GAAP (a requirement) for CDC audits. Proposed § 120.826 would also incorporate the Single Audit Act requirements into SBA's 504 program regulations.

Section 120.830—Reports a CDC must submit. SBA is proposing an amended § 120.830 to clarify the current annual report requirement by detailing the statements that must be included.

Section 120.845(b)—PCLP status. Section 120.845(b) would be revised to provide that final determinations under this section would be made by the appropriate Office of Capital Access official in accordance with Delegations of Authority. This proposed revision would reflect changes in internal agency procedure.

Section 120.853—Oversight and evaluation of CDCs. Section 120.853 currently covers both SBA reviews and Inspector General audits of CDCs. The proposed rule would move the CDC review portion of the regulation to subpart I—Lender Oversight (proposed § § 120.1000 and 120.1050—On-site Reviews and Examinations). The proposed rule would retitle § 120.853 ''Inspector General Audits of CDCs'' consistent with the revised subject matter.

Section 120.956—Suspension or revocation of brokers and dealers. The proposed rule would revise § 120.956 to provide that the appropriate Office of Capital Access official in accordance with Delegations of Authority (rather than the D/FA) would be responsible for suspensions and revocations of broker/dealer participation in the Secondary Market. This is consistent with SBA's Delegations of Authority for oversight and enforcement responsibilities. In addition, the proposed rule deletes the last sentence on suspension of appeal rights.

Subpart I—Risk-Based Lender Oversight. SBA is significantly enhancing subpart I in Part 120 introduced on May 4, 2007 with SBA's published final rule on its Lender oversight fees. 72 FR 25194. The enhancements would consolidate SBA's supervision and enforcement authorities for SBA Lenders, Microloan Intermediaries and NTAPs. This consolidation would facilitate more coordinated and effective lender oversight.

Section 120.1000—Risk management/Lender oversight. SBA is proposing a new § 120.1000 entitled ''Risk management/Lender oversight'' that would describe lender oversight functions and the financial institutions supervised under the subpart.

Section 120.1005—Bureau of PCLP Oversight. In Public Law 108–232 (May 28, 2004), the ''Premier Certified Lenders Program Improvement Act of 2004'', Congress established two

alternative loss reserve pilot programs for certain Premier Certified Lenders (PCLP CDCs) loan loss reserve funds (LLRF). The public law also established the Bureau of PCLP Oversight in SBA to carry out such functions as the Administrator designates towards implementing the pilot programs. On May 26, 2006, SBA published a proposed rule governing the LLRF pilot programs. See, 71 FR 30323. Under the published proposed regulations, the Bureau of PCLP Oversight (Bureau) would approve the independent auditor that a pilot participant would engage to calculate its required LLRF. The Bureau would also review and make a determination as to a pilot participant's process for analyzing the risk of loss associated with the pilot participant's outstanding PCLP debentures (and the underlying loans) and the sufficiency of the LLRF. SBA anticipates publishing a final PCLP rule in the future.

Proposed § 120.1005 as contained in today's proposed lender oversight rule would include the Bureau of PCLP Oversight within subpart I, SBA's consolidated lender oversight regulations. Proposed § 120.1005 would provide that the Bureau monitor the capitalization of PCLP CDC pilot participants' LLRFs, and perform other related functions. SBA may expand Bureau functions in the future consistent with SBA's statutory authority.

Section 120.1010—SBA access to SBA Lender, Microloan Intermediary, and NTAP files. Proposed § 120.1010 governs SBA access to SBA Lender, Microloan Intermediary, and NTAP files. SBA is relocating its current file access regulation from § 120.414 and expanding this codification of authority to explicitly include CDCs, Microloan Intermediaries, and NTAPs. This provision is intended to facilitate lender oversight.

Section 120.1015—Risk Rating System. SBA is proposing a new § 120.1015 entitled ''Risk Rating System.'' Under proposed § 120.1015, SBA could assign a Risk Rating to all SBA Lenders, Microloan Intermediaries, and NTAPs on a periodic basis (currently quarterly for SBA Lenders). This SBA Risk Rating process is detailed separately in final **Federal Register** notice at 72 FR 27320 (May 16, 2007). Risk Ratings range from one to five, with one indicating the least risk and five the most risk to SBA. OCRM would, from time to time, define the numeric definitions of acceptable and unacceptable levels of risk. For additional discussion of the Risk Rating System within this proposed rule, see the Proposal section of the preamble.

Section 120.1025—Off-site reviews/monitoring. SBA is proposing a new § 120.1025 entitled ''Off-site reviews/monitoring''. Under proposed § 120.1025, SBA may conduct off-site reviews/monitoring of all SBA Lenders, Microloan Intermediaries, and NTAPs, including SBA Lender self-assessments and other targeted off-site reviews as defined by SBA. Currently, SBA conducts off-site SBA Lender reviews on at least a quarterly basis using SBA's Loan and Lender Monitoring System (L/LMS). The L/LMS off-site review is SBA's primary method of monitoring all of SBA's 5000-plus SBA Lenders. For lower volume SBA Lenders, it may be the sole method of SBA review. L/LMS off-site reviews/monitoring are also used in conjunction with SBA Lender onsite reviews/exams and self-assessments (e.g. for purposes of planning and prioritization of exams/reviews/assessments and for evaluating performance).

Under proposed § 120.1025, SBA could require an SBA Lender, Microloan Intermediary, or NTAP to perform a self-assessment. This would be analogous to an AICPA Agreed Upon Procedures Engagement. For lower volume SBA Lenders, Microloan Intermediaries, and NTAPs, a self-assessment could consist of a self-evaluation as to SBA performance or compliance with certain SBA requirements. Generally, SBA would consider requiring a self-assessment to confirm corrective actions implemented or in lieu of a targeted or limited scope review. SBA expects to provide additional guidance on self-assessments in its SOPs.

Finally, SBA may also perform targeted off-site reviews and monitoring (e.g., performance comparison to SBA portfolio and peer averages, error rates in 1502 reporting, trend analysis, etc.). Off-site reviews/monitoring mechanisms like L/LMS, self-assessments, and other targeted off-site reviews are a timely and cost effective means of overseeing and monitoring the SBA performance and compliance of SBA Lenders, Microloan Intermediaries, and NTAPs.

Section 120.1050—On-site reviews and examinations. Proposed § 120.1050—''On-site reviews and examinations'' would codify in one place within SBA regulations SBA's authority to conduct examinations of SBA Supervised Lenders and reviews of the SBA operations of SBA Lenders. The proposed section would also describe the examination and review components that SBA would likely evaluate. For SBA Supervised Lender safety and soundness examinations, SBA would examine capital adequacy; asset quality; management quality; earnings; liquidity; compliance with laws, regulations, rules, SOPs, and SBA agreements; and such other risk related factors as SBA may identify from time to time. SBA's safety and soundness examinations are similar in scope to those conducted by the Federal Financial Institution Regulators. For SBA operational reviews, SBA would review the SBA portfolio performance; SBA operations management; credit administration; compliance with laws, regulations, rules, SOPs, and SBA agreements; and such other risk related factors as SBA identifies from time to time. These components have been identified by SBA as most useful in assessing lender performance and risk to the loan program. Section 120.1050 would also provide for SBA reviews of Microloan Intermediaries and NTAPs. Finally it would provide SBA with the flexibility to perform other reviews and examinations, as SBA determines necessary. These could include targeted or limited scope reviews/examinations (e.g., ad hoc reviews/examinations, additional monitoring activities, special performance assessments). Targeted and limited scope reviews/examinations would provide for a more efficient and less burdensome means of supervision of specific deficiencies.

Section 120.1051—Frequency of on-site Lender reviews and examinations. Proposed § 120.1051 provides that SBA would perform on-site reviews and examinations on a periodic basis. Currently, SBA plans on conducting such reviews and examinations on a 12 to 24 month cycle, depending on the risk characteristics of the SBA Lender, Microloan Intermediary, or NTAP. The proposed regulation would also list some risk-related factors that SBA would consider in determining review/examination frequency. They would include (but would not be limited to): (i) Off-site review/monitoring results (e.g. Risk Rating); (ii) SBA portfolio size; (iii) prior findings; (iv) responsiveness to correcting past deficiencies; and v) such other risk-related factors as determined by SBA.

Section 120.1055—Review and examination results. Under the proposed rule, SBA would provide SBA Lenders, Microloan Intermediaries, and NTAPs a copy of their report of examination or review (Report). The Report would contain findings, conclusions, corrective actions and/or recommendations. The proposed regulation requires each director of an SBA Supervised Lender and manager of the SBA Operations of SBA Lenders, Microloan Intermediaries, and NTAPs to review the Report. If such senior

management review the Report consistent with their responsibilities, it is more likely that the SBA Lender, Microloan Intermediary, and NTAP would commit to and make corrective actions. Proposed § 120.1055, would also provide procedures for responding in writing to SBA Reports along with the consequences of failure to submit or implement responses, corrective actions, and capital restoration plans.

Section 120.1060—Confidentiality of Reports, Risk Ratings, and related Confidential Information. Proposed § 120.1060 would provide that Reports and other SBA prepared review or examination related documents are the property of SBA. It would also provide that Reports, Risk Ratings and related Confidential Information (including SBA Lender portal information) would be privileged and confidential. The term ''Confidential Information'' is defined in the SBA Lender Information Portal, and by notice issued from time to time. Currently, it is defined as ''all lender-related information contained in the Portal including 'Lender Results', except for the 'Past 12 Month Actual Purchase Rate' and the 'Past 12 Month Actual Charge-Off Rate'.'' Under the proposed rule, SBA Lenders, Microloan Intermediaries, and NTAPs would be required to restrict access to the Report, the Risk Rating, and the Confidential Information to certain ''permitted parties'' as defined in this proposed regulation and to those for whom access is required by applicable law or legal process. For example, if it is determined that such law or legal process requires disclosure to a Federal Financial Institution Regulator, then this proposed regulation would not preclude that access. SBA Lenders, Microloan Intermediaries and NTAPs would be prohibited from otherwise disclosing Report, Risk Rating, and Confidential Information in full or in part in any manner without SBA's prior written permission. The confidentiality requirement is reflective of the principles underlying the bank examiners privilege—it provides for more open dialogue between regulators and financial institutions, intending to lead to more cooperative and expeditious identification and resolution of institution issues. For more discussion on the confidentiality and limitations on disclosure see SBA Lender Risk Rating System final notice, 72 FR 27611 (May 16, 2007).

Section 120.1400—Grounds for enforcement actions—SBA Lenders. The proposed rule would consolidate existing SBA enforcement authorities for SBA Lenders with new authorities, most of which are outlined in 15 U.S.C. 650 *et seq.* The SBA enforcement action provisions of the proposed rule would begin with a new § 120.1400 that would provide a listing of grounds that may trigger enforcement action. Proposed § 120.1400 lists first those grounds that, in general, could trigger enforcement actions, then those grounds that are specific to certain enforcement actions, most of which are specific to certain types of institutions (e.g., SBA Supervised Lenders).

Grounds for enforcement actions would not be limited to violations of the regulations as stated in proposed subsection (a). SBA is authorized to bring enforcement actions for breaches of terms and conditions in the SBA Form 750 Loan and Guaranty Agreement and all other agreements jointly executed by the SBA Lender and SBA.

The grounds, as proposed, are primarily derived from current regulations or directly from the Act. For example, the grounds would include: Failure to maintain eligibility requirements; failure to comply materially with any requirement imposed by statute, regulation, SOP, policy or procedural notice, or any agreement; making a material false statement; and not performing underwriting, closing, disbursing, servicing, liquidation, or litigation in a commercially reasonable and prudent manner with respect to the applicable loan program (e.g., 7(a) or 504). A repeated Less Than Acceptable Risk Rating would be included in enforcement action grounds indirectly through subsections (c)(4) and (c)(9). Subsection (c)(4) would provide that a repeated Less Than Acceptable Risk Rating or on-site review/examination assessment could be evidence to support a determination that the SBA Lender was not performing underwriting, closing, disbursing, servicing, liquidation, litigation or other actions in a commercially reasonable and prudent manner. Subsection (c)(9) would provide that SBA may take enforcement action if SBA determines there is increased financial risk (for example—if SBA Lender has a repeated Less Than Acceptable Risk Rating or if an officer, key employee, or loan agent involved with SBA loans for an SBA Lender is indicted for a felony or on fraud charges). SBA expects to consider additional factors (e.g., on-site review/examination assessment or corrective action implemented) before taking formal enforcement actions on Risk Rating grounds. For CDCs, in particular, the Risk Rating and review assessment would replace the indirect role of the portfolio benchmarks under current § 120.854(a)(4).

Proposed paragraphs (11) and (12) would provide the grounds for immediate suspension of loan program activities for SBA Lenders except SBA Supervised Lenders, as well as the grounds for immediate suspension of delegated authorities for all SBA Lenders. The basis for such action would be a determination by SBA that one or more of the grounds in subsection (c) exist and, that immediate action is needed to prevent the risk of significant loss to SBA or to prevent significant impairment of the 7(a) or 504 programs.

Proposed subsections (d) and (e) would incorporate the statutory grounds for certain SBA Supervised Lender and SBLC enforcement actions under 15 U.S.C. 650 *et seq.* Among those are grounds specific to SBA Supervised Lenders (excluding Other Regulated SBLCs under proposed § § 120.1510 and 120.1511) for suspensions and revocations of SBA program authority. Subsection (f) would list additional grounds specific to CDCs and, for PCLP CDCs, includes failure to establish and maintain a LLRF in accordance with SBA regulations.

Section 120.1425—Grounds—Intermediaries participating in the Microloan program and NTAPs. Proposed § 120.1425 would incorporate grounds for enforcement actions against Microloan Intermediaries and NTAPs contained in current § 120.716 into subpart I. In addition, the proposed regulation would provide that a repeated Less Than Acceptable Risk Rating or an indictment for a felony or on fraud charges of an officer, key employee, or loan agent involved with SBA loans or the SBA program for a Microloan Intermediary or NTAP could be evidence of SBA's increased financial or program risk, and as such, also serve as grounds for formal enforcement action. However, it would not automatically mean that SBA would take formal enforcement action under proposed § 120.1540. In addition, SBA expects to consider additional factors (e.g. on-site review/examination assessment or corrective actions implemented) before taking formal enforcement action.

Section 120.1500—Enforcement actions—SBA Lenders. SBA is proposing a new § 120.1500 entitled ''Enforcement Actions—SBA Lenders'' that lists the formal enforcement actions that SBA may take against an SBA Lender. These provisions generally would be listed in a graduated manner within each SBA Lender category. New to this formal list is (i) imposition of

portfolio guarantee dollar limit, (ii) suspension and/or revocation of Secondary Market activity; and (iii) the new statutory SBA Supervised Lender enforcement actions. SBA added the portfolio guarantee limit as a means of limiting SBA's risk exposure for a particular SBA Lender. SBA included suspension/revocation of a 7(a) Lender's authority to sell or purchase loans in the Secondary Market in its list of formal graduated actions also as a means of limiting an SBA Lender's risk exposure to SBA and the Secondary Market. The suspension and revocation of individual lending functions would facilitate SBA taking more targeted measures to address isolated but significant functional deficiencies.

The capital directive is within the SBLC enforcement actions. Under proposed subsection (d)(1), SBA may order a capitally impaired SBLC (or SBLC operating in an imprudent manner) to meet its capital requirement, submit and adhere to a capital restoration plan, and obtain SBA approval before taking certain actions, as detailed.

Sections 120.1510 and 120.1511—Other Regulated SBLCs. Proposed § § 120.1510 and 1511 would address the rare instance where an SBLC itself is directly examined by a Federal Financial Institution Regulator or State banking regulator. Under such circumstances, the ''Other Regulated SBLC'' would be exempt from the statutory enforcement provisions specific to SBA Supervised Lenders as granted in § 23 of the Act, 15 U.S.C. 650 [except those for SBLCs only in subsections (b) and (c)]. SBA, instead, would rely on a Federal Financial Institution Regulator's or state banking regulator's safety and soundness examination conducted directly on the SBLC and their follow-up to address safety and soundness issues.

To obtain the designation of Other Regulated SBLC, the SBLC would have to certify, under proposed § 120.1511, that it is directly examined and regulated by a Federal Financial Institution Regulator or state banking regulator. The elements of this certification are detailed in the Regulation. This certification would have to be submitted in writing within 60 days of the effective date of the final rule or within 60 days of the date the SBLC becomes directly examined and directly regulated by such regulator. The SBLC would have to identify the Federal Financial Institution or state banking regulator performing the examinations on it directly and provide information on the most recent safety and soundness examination. An Other Regulated SBLC would also be required to notify SBA in writing each time such a safety and soundness examination of the SBLC itself took place and report the interaction, to the extent allowed by law.

Proposed § 120.1511(g) would provide that, in the event an SBLC fails to timely comply with the necessary certification and reporting requirements, then the § 120.1510 exemption would not apply and SBA would exercise its statutory authority to supervise the safety and soundness of the SBLC and may take the statutory SBA Supervised Lender enforcement actions, as necessary, to protect the financial interests of the 7(a) program.

While an Other Regulated SBLC would be expected to comply with SBLC requirements, as set forth for example in proposed § § 120.470 (SBLC general licensing requirements), 120.471–474 (SBLC minimum capital requirements), 120.475 (SBLC change of control), 120.476 (SBLC prohibited financing), 120.460 (internal controls), 120.461 (document retention), 120.463 (regulatory accounting), 120.464 (reports), and 120.490 (IG audits), it would only be subject to SBA Lender risk-based reviews and enforcement provisions and not the statutory SBA Supervised Lender supervision and enforcement provisions, except those that are SBLC licensing specific (i.e., capital directive and civil action).

Section 120.1540—Enforcement actions—Intermediaries participating in the Microloan program and NTAPs. Proposed § 120.1540 would incorporate formal enforcement actions against Microloan Intermediaries and NTAPs set forth in current § 120.716 into subpart I.

Section 120.1600—General procedures for enforcement actions—SBA Lenders, Management Officials, Other Persons, Intermediaries, and NTAPs. Proposed § 120.1600 would largely adopt the enforcement procedures for CDCs currently contained in § 120.856 and extend them, in general, to all SBA Lenders, Microloan Intermediaries and NTAPs. Proposed procedures would include a notice of enforcement action; opportunity to object; notice of final Agency decisions; and a provision on appeals directly to federal district court. Additions/changes to the general provision include, but are not limited to, a provision to make clear that request for clarification of notice for additional time to respond must be received by the same deadline for objection; responses and such requests must be submitted to the appropriate Office of Capital Access official in accordance with Delegations of Authority; and appeals of the final Agency decision would no longer be filed with SBA's OHA but would be filed in the appropriate Federal district court. Proposed § 120.1600 would also set forth procedures for certain SBA Supervised Lender, Management Official, or Other Person enforcement actions as prescribed by statute. This would include enforcement procedures specific to SBA Supervised Lenders (excluding Other Regulated SBLCs under proposed § § 120.1510 and 120.1511) for suspensions and revocations of SBA program authority. The additional procedures in subsection ''c'' for SBLC capital directive would generally follow similar provisions of other Federal Financial Institution Regulators.

IV. Comments Request

Readers are encouraged to review closely each section of the proposed rule in conjunction with current regulations to fully comprehend the extent of the rule and its changes. SBA invites comment on all aspects of this proposed rule, including the underlying policies. SBA may rely on its own expertise in promulgating the final rule. Submitted comments will be available to any person or entity upon request.

Compliance with Executive Orders 12866, 12988, and 13132, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C., Ch. 35) Executive Order 12866: The Office of Management and Budget has determined that this rule constitutes a ''significant regulatory action'' under Executive Order 12866 thus requiring a Regulatory Impact Analysis, as set forth below.

A. Regulatory Objective of the Proposal

SBA is proposing a rule to incorporate SBA's risk-based lender oversight program into SBA regulations. Specifically, the proposed rule would establish the role and responsibilities of SBA's Office of Credit Risk Management within subpart I to 13 CFR Part 120. It would codify in 13 CFR SBA's process of risk-based oversight including: (i) Accounting and reporting requirements; (ii) off-site reviews/monitoring; (iii) on-site reviews and examinations; and (iv) capital adequacy requirements. The proposed rule would also list the types of, grounds for, and procedures governing SBA enforcement actions within consolidated enforcement regulations for all 7(a) Lenders, CDCs, Microloan Intermediaries, and NTAPs. This rule is necessary to provide coordinated and effective oversight of financial institutions that originate and manage SBA guaranteed loans.

These regulatory changes would improve SBA's oversight and management of the 7(a), 504, Microloan and NTAP programs. SBA believes that there are no viable alternatives to these changes that would produce similar positive results without imposing an additional burden on the SBA or the public.

B. Baseline Costs

1. Baseline Costs for 7(a) Lenders (Excluding SBA Supervised Lenders)

All 7(a) Lenders are currently required to be supervised and examined by a state or Federal regulatory authority, satisfactory to SBA. This is a cost already borne by these 7(a) Lenders. In addition, these 7(a) Lenders are subject to SBA's supervisory and enforcement provisions contained in the business programs portion of Part 120. The estimated annual baseline costs to the Federal government for 7(a) Lenders' oversight is provided for in the existing OCRM infrastructure.

2. Baseline Costs for SBLCs

Each SBLC is currently required to submit audited financial statements within three months after the close of each fiscal year and interim financial reporting when requested by SBA. SBA also currently requires that SBLCs submit a report on any legal or administrative proceeding, by or against the SBLC, or against an officer, director or employee of the SBLC for an alleged breach of official duty; copies of any report furnished to its stockholders; a summary of any changes in the SBLC's organization or financing; notice of capital impairment; and such other reports as SBA may require from time to time by written directive. The collection of the information and reports referenced here is largely already maintained by the SBLCs for operational and financing purposes. It is estimated that preparation and submission of this information takes about 80 hours annually for each SBLC. The hour burden is an SBA estimate based on inquiries made to selected SBLCs. The estimate of the total annual cost burden is based on an average annual outside audit fee of $8,000 per respondent, plus an additional $2,000 per respondent for staff involvement in the independent audit engagement and SBA reporting (approximately 15 hours of CFO time at a $100 hourly rate plus 15 hours of administrative profession time at a $30 hourly rate, rounded). This total cost burden is estimated at $140,000 for 14 SBLCs. SBA has reduced this figure by $20,000 to $120,000 to adjust for reduced costs for smaller SBLCs. The estimated annual cost to the Federal government for this information collection is approximately 8 hours of Financial Analyst time at $55 per hour, or $6,160 annually for all 14 SBLCs. Any additional estimated indirect annual cost to the Federal government for oversight of these SBLCs is provided for in the existing OCRM infrastructure.

3. Baseline Costs for NFRLs

No direct costs are currently incurred by NFRLs for SBA oversight and related functions discussed in this proposed rule. The estimated annual cost to the Federal government for oversight of these NFRLs is provided for in the existing OCRM infrastructure.

4. Baseline Costs for CDCs

Each CDC is currently required to submit to SBA an annual report within 180 days of the fiscal year end, including financial statements of the CDC and any affiliates or subsidiaries and such interim reports as SBA may require. The collection of the information and reports referenced here is largely already maintained by the CDCs for operational purposes. SBA has estimated that preparation and submission of this information takes approximately 28 hours annually for each CDC, at an average cost of $30 per hour for staff compilation, which computes to a cost of $840 per CDC, and a total of 7,560 hours for all CDCs. This total cost burden is $226,800 (7,560 hours × $30) for the approximately 270 CDCs. The estimated annual cost to the Federal government for this information collection is approximately 1 hour of financial analyst time per CDC or 270 hours total for all CDCs, at a cost of $55 per hour. Estimated annual Federal cost burden therefore is estimated at $14,850 (270 hours × $55). The remaining estimated annual cost to the Federal government for oversight of CDCs is provided for in the existing OCRM infrastructure.

5. Baseline Costs for Microloan Intermediaries and NTAPs

Microloan Intermediaries and NTAPs currently incur no direct costs for oversight and related functions as discussed in this proposed rule. The estimated annual cost to the Federal government for oversight of these Microloan Intermediaries and NTAPs is currently provided for in the existing OFA infrastructure.

C. Potential Benefits and Costs of the Proposed Rule

1. Potential Benefits and Costs of the Proposed Rule to all SBA Lenders, Microloan Intermediaries and NTAPs

The proposed rule would benefit SBA Lenders, Microloan Intermediaries, and NTAPs by generally consolidating oversight authority and responsibility within one SBA office, OCRM. These institutions would also benefit from knowledge of established and further defined programmatic standards, enforcement grounds, ranges of enforcement actions and procedures for supervision and enforcement actions as set forth in the proposed rule. They may further benefit from performance feedback to the extent it can assist them in improving their SBA operations and minimizing losses.

While there are specific benefit and costs issues for specific categories of lenders as detailed below, all SBA Lenders, Microloan Intermediaries and NTAPS will incur some relatively minimal costs related to the proposed rule's incorporation of review/exam reporting (e.g., self-assessments and related reporting, corrective action plans). Self-assessments and review/exam reporting are a timely and cost effective means of overseeing and monitoring the SBA performance and compliance of SBA Lenders, Microloan Intermediaries and NTAPs.

2. Potential Benefits and Costs of the Proposed Rule to 7(a) Lenders (Other Than SBLCs and Other NFRLs)

No additional direct costs are projected to be incurred by 7(a) Lenders for oversight as contained in the proposed regulations. No additional reporting or direct costs are projected to be incurred by 7(a) Lenders with the rule's implementation.

3. Potential Benefits and Costs of the Proposed Rule to SBLCs

The proposed rule would provide for more developed internal control requirements and adoption of a formal capital plan. It would also require filing of (i) quarterly condition reports (including financial statements); (ii) reports of changes in financial condition; (iii) notice of change of auditor; (iv) capital restoration plans; and (v) Other Regulated SBLC Reports, with certifications as to accuracy or compliance (including capital compliance) as applicable. Because internal controls, formal capital plans, and quarterly financial statements are likely already maintained by the SBLCs for operational purposes, SBA estimates little or no additional cost for these new

requirements. It is estimated that preparation and submission of all the additional reports and the new recordkeeping would take approximately 3 hours annually of additional CFO time at a $100 hourly cost, plus 3 hours annually of additional administrative professional time at a $30 hourly cost. Therefore, the total additional cost burden would be $5,460 ($390 × 14) for 14 SBLCs.

4. Potential Benefits and Costs of the Proposed Rule to NFRLs

The proposed rule would require each NFRL to submit an annual report, including audited financial statements within three months after the close of each fiscal year. The proposed rule would further require that all audited financial report filings be prepared in accordance with GAAP, and include an opinion from the independent accounting firm engaged in the audit. It would also require NFRLs to submit: (i) a report on any legal or administrative proceeding, by or against the NFRL, or against an officer, director or employee of the NFRL for an alleged breach of official duty; (ii) copies of any report/publications furnished to its stockholders; (iii) summaries of changes in the NFRL's organization or financial structure, personnel and eligibility; (iv) notice of capital impairment; (v) quarterly condition reports; (vi) changes in financial condition reports; (vii) recapitalization plans; and (viii) notice of changes in auditors and such other reports as SBA may require from time to time by written directive—with certifications as to accuracy and compliance (including capital compliance), as applicable. The proposed rule would also require adoption of a developed internal control policy, records maintenance, and adoption of a formal capital plan. Much of the collection of the information and reports referenced here, as well as the requirements for internal control, records retention and adoption of a formal capital plan are likely information already maintained by the NFRLs for operational, and in some instances financing, purposes. SBA estimates preparation and submission costs consistent with that of the baseline for the SBLCs, at 80 hours of external auditor time at $100 hourly rate, plus an additional $2,000 per NFRL for staff involvement in the independent audit engagement (approximately 15 hours of CFO time at a $100 hourly rate plus 15 hours of administrative profession time at a $30 hourly rate, rounded) for a total of $10,000 per NFRL. SBA estimates additional reporting and recordkeeping requirements to the NFRLs (that which would be new to SBLCs as well) at 3 hours of additional CFO time at a $100 hourly rate plus 3 hours of additional administrative professional time at a $30 hourly rate ($390 per NFRL). Since there are no current baseline costs to NFRLs, the total additional cost burden for this proposed rule for the 58 NFRLs (as of May 2007) would potentially be $602,620 ($10,390 × 58 NFRLs).

5. Potential Benefits and Costs of the Proposed Rule to CDCs

The proposed rule would require each CDC to submit an annual report, including audited financial statements within three months after the close of each fiscal year and interim financial reporting when requested by SBA. All audited financial report filings would be required to include an opinion from the independent accounting firm engaged in the audit. The proposed rule would also require enhanced internal control requirements. The collection of the information referenced here, including the annual audited financial statements, as well as the requirements for internal control would include information, policies and procedures likely already maintained by many of the CDCs for operational purposes. The hour burden is an SBA estimate based on inquiries made to selected CDCs. It is estimated that preparation and submission of this information would take approximately 40 (auditor) hours annually for each CDC, at an average cost of approximately $4,000 ($100 per hour for CPA-credentialed auditor) average outside audit fee, plus internal staff time of 4 hours at the administrative professional rate of $30 per hour ($120 per CDC). This is in lieu of existing Baseline Costs for CDCs outlined in paragraph 4 of Section B. Baseline Costs. The total cost would be $1,112,400 ($4,120 × 270 CDCs). The total additional cost burden would be $885,600 ($1,112,400 − $226,800 baseline) for the 270 CDCs for this proposed rule. We note, however, that this number may be dramatically reduced because many CDCs are already required to maintain audited financial statements and internal control programs under The Single Audit Act requirements.

6. Potential Benefits and Costs of the Proposed Rule to Microloan Intermediaries and NTAPs

No additional direct costs are projected to be incurred by Microloan Intermediaries and NTAPs for lender oversight and related functions in this proposed rule. No additional costs would be incurred by Intermediaries due to the implementation of this rule, since general oversight, suspension or revocation already exists in § 120.716 and is replaced by consolidated oversight within subpart I, and no additional reporting is required by this proposed rule.

7. Potential Benefits and Costs for SBA and the Federal Government

Benefits to SBA include improved administration of the lender oversight process through general consolidation of oversight authority within OCRM. SBA would also benefit from having more timely and complete operations information, including financial information for SBA Supervised Lenders and CDCs. In addition, the Agency would benefit from further defined standards, enforcement grounds, ranges of enforcement actions and procedures for supervision and enforcement actions for all SBA Lenders, Microloan Intermediaries and NTAPs. Finally, the rules' additional requirements and lender oversight provisions would provide improved and more timely lender monitoring to ultimately further minimize the risks of losses in SBA's loan programs.

For 7(a) Lender specific sections, no additional reporting from these lenders is required by the proposed rule, and therefore no additional direct costs for assessment of any such reporting would be incurred by SBA for provisions related to oversight functions in this proposed rule.

For SBLCs, we estimate the proposed rule would require an additional 3 hours financial analyst time at a $55 hourly rate to the Federal government for each SBLC or 42 hours overall (3 × 14 SBLCs) for an additional annual cost of $2,310 to the Federal government.

For NFRLs, the estimated annual cost to the Federal government would be approximately 8 hours financial analyst time at a $55 hourly rate. Therefore, estimated annual cost to the Federal government related to oversight of all 58 NFRLs in accordance with this proposed rule would be 688 hours for $25,520.

For CDCs, the estimated cost to the Federal government would be for additional information collected approximated at 1 hour financial analyst time for each CDC at a $55 hourly rate. The total additional cost would be $14,850 (1 hr × 270 × $55). In lieu of existing baseline cost of $14,850 (1 hr per CDC), the total cost would be $29,700.

For Microloan Intermediaries and NTAPs, no additional direct costs to SBA would be incurred for the lender oversight functions and related provisions in this proposed rule.

Any additional indirect cost to the Federal government for oversight of the SBA Lenders, Microloan Intermediaries, and NTAPs under this proposed rule would be covered by the already-existing OCRM infra-structure.

8. Cost Basis

For purposes of this proposal, CPA and CFO salary rates used were based on information published by the American Institute of Certified Public Accountants (AICPA) for CPA-credentialed individuals (external auditor or internal CFO) estimated at $100. The salary rates for administrative professionals were based on information published by the International Association of Administrative Professionals. Internal SBA financial analyst time was estimated at GS–14 step 5 level of $99,203 plus 24.8% benefits allocation, or approximately $55 per hour.

SBA is requesting comments from the public on any monetized, quantitative or qualitative costs of SBA Lenders, Microloan Intermediary, or NTAP compliance with this proposed rule. Please send comments to the SBA official referenced in the **ADDRESSES** section of the preamble.

D. Alternatives

SBA believes that this proposed rule is SBA's best available means for achieving its regulatory objective of incorporating coordinated risk-based supervision and enforcement into SBA regulations and implementing the provisions of Public Law 108–447 and SBA's Delegation of Authority for lender oversight. SBA is requesting comments from the public on any potentially effective and reasonably feasible alternative to this proposed rule as it applies to SBA Lenders, Microloan Intermediaries, and NTAPs and the costs and benefits of those alternatives.

Executive Order 13132: For the purposes of Executive Order 13132, the SBA determined that this rule has no federalism implications warranting preparation of a federalism assessment.

Executive Order 12988: For the purposes of Executive Order 12988, Civil Justice Reform, SBA has determined that this proposed rule is crafted, to the extent practicable, in accordance with the standards set forth in §§ 3(a) and 3(b)(2), to minimize litigation, eliminate ambiguity, and reduce burden. The proposed regulations would provide for rights of appeal to SBA Lenders, Microloan Intermediaries, and NTAPs in the event they are aggrieved by an Agency decision, thereby limiting the possibility of litigation by these entities. This proposed rule would not have retroactive or pre-emptive effect.

Regulatory Flexibility Act: This proposed rule directly affects all SBA Lenders, Microloan Intermediaries, and NTAPs. There are approximately 5,000 7(a) Lenders, 270 CDCs, 250 Microloan Intermediaries, and there were 11 NTAPs participating with SBA funding when NTAPs were last funded. SBA has determined that CDCs, Microloan Intermediaries, and the 14 SBLCs fall under the size standard for NAICS 522298, All other Nondepository Credit Intermediation. The size standard for NAICS 522298 is $6.5 million or less in average annual receipts. There are approximately 58 NFRLs, most of which fall in NAICS 522298 (the rest fall into NAICS 522110, Commercial Banking). The remaining 7(a) Lenders fall under the size standard for NAICS 522110, Commercial Banking. The size standard for NAICS 522110 is assets of $165 million or less. The NTAPs fall under the size standard for NAICS 541990, All Other Professional, Scientific and Technical Services. The size Standard for NAICS 541611 is $6.5 million or less in average annual receipts.

SBA estimates that over 95 percent of the CDCs and Microloan Intermediaries do not exceed the applicable size standard and are, therefore, considered small entities by this definition. Approximately half of all of the 7(a) Lenders exceed the small business size standard set for NAICS 522110. Thus, SBA has determined that this proposed rule would have an impact on a substantial number of small entities. However, for the reasons explained following, SBA does not believe that the proposed rule will have a significant economic impact on those entities.

The proposed rule would contain several different sections. For clarity, SBA has analyzed the economic impact by section, as follows:

A. Proposed Reporting Requirements for SBA Supervised Lenders and CDCs: There are 14 Small Business Lending Companies (SBLCs) and approximately 58 NFRLs that are authorized to make 7(a) loans. The majority of the NFRLs are nondepository commercial Lenders. Most of the NFRLs are classified under NAICS 522298, which has a small business size standard of $6.5 million or less in annual revenues. The remaining NFRLs are classified under NAICS 522110, Commercial Banking, which has a small business size standard of $165 million or less in assets.

Current regulations require SBLCs to submit their audited financial statements to SBA within three months after the close of their fiscal year. Financial statement submission allows SBA to perform a size determination on SBLCs with a reasonable degree of accuracy. Based on submitted financial statement, of the twelve active SBLCs, four exceed the small business size standard for NAICS 522298.

Presently, there is no requirement that NFRLs submit financial statements to SBA. Therefore, SBA does not have the information to determine current average annual receipts. To estimate the size of the NFRLs, SBA reviewed a sample of the financial statements that NFRLs had submitted to SBA when they first applied for authorization to make 7(a) loans. Based on a review of those financial statements, we estimate that two-thirds of the NFRLs are small. Based on the financial data in the NFRL applications and up-to-date financial data supplied by SBLCs to SBA, SBA believes that the proposed rule would impact a substantial number of these small entities, but not constitute a significant economic impact, as detailed below.

The proposed rule, which defines ''SBA Supervised Lenders'' as NFRLs and SBLCs, requires these Lenders to provide SBA with the following information: (1) Annual audited financial statements, (2) quarterly condition reports, (3) copies of any legal and administrative proceedings by or against the SBA Supervised Lender, (4) copies of any report furnished to its stockholders, (5) reports of changes in the SBA Supervised Lender's organization or financing, (6) reports of changes in the SBA Supervised Lender's financial condition, (7) notice of change in auditors, (8) notice of capital impairment, (9) capital restoration plans, (10) Other Regulated SBLC reports, (11) other reports (that SBA may require from time to time) and (12) certifications of compliance with capital requirement. Several of these are already required of SBLCs. The proposed rule would also provide for record retention requirements and recordkeeping of a capital adequacy plan.

As is mentioned above, SBLCs are already required to submit audited annual financial statements to SBA. It has been SBA's experience that SBLCs and NFRLs also prepare quarterly financial statements on a regular basis for their own internal management purposes, and SBA believes that most of the NFRLs also prepare audited annual financial statements for their internal management purposes. The proposed rule would require both NFRLs and SBLCs to provide the SBA with copies of their financial statements on a quarterly basis and would expand the requirement for annual audited

financial statements submitted to SBA to include NFRLs. Existing regulations also require SBLCs to maintain compliance with SBA capital requirements. The proposed rule would expand the number of firms subject to SBA's capital regulation by making NFRLs subject to certain capital regulations. The proposed rule would also require SBA Supervised Lenders to provide SBA with a quarterly certification that they are in compliance with the SBA capital requirement. A certificate of compliance with SBA capital regulations would normally be prepared by a financial institution's chief financial officer or someone from his staff under the proposed rule. SBA believes that it would take no more than one hour per quarter to prepare and certify. The certification could accompany quarterly condition reporting. In accordance with the American Institute of Public Accountants published surveys, the salary and benefits rate for a CPA-credentialed individual is estimated at $100 per hour. This computes to an estimated annual cost of $400 to cover the CFO's time. We estimate that the administrative staff work involved in preparing the submission materials would take no more than one hour for those quarters not covered by the Annual Report. According to a recent survey published by the International Association of Administrative Professionals, the salary estimate is $30 per hour. This calculates to an annual expense of $120 per year. The combined annual expense that SBA Supervised Lenders would incur in order to comply with this reporting would be on average $520 ($400 + $120). SBA does not believe that an additional $520 cost annually constitutes significant economic impact on any of these firms, which can routinely engage in financings in the million dollar range. Therefore, SBA certifies that this aspect of the proposed rule would not have a significant economic impact on a substantial number of small entities.

Current regulations require that SBLCs submit copies of the following to SBA: (1) Any legal and administrative proceedings by or against them, (2) any reports it furnishes to its stockholders, and (3) summaries of changes in the SBLCs organization and financing, (4) notice of capital impairment, and (5) such other report it is required by SBA to furnish on a specific matter. The proposed rule would extend to NFRLs these ad hoc reporting requirements. SBA believes this data is likely already collected and that similar documents are already prepared by the NFRLs. The proposal only requires the NFRLs to submit the documents to SBA. Because these are documents that are likely already in the possession of the NFRLs, SBA does not believe that the NFRLs would incur any significant costs to comply with the proposal. SBA, therefore, certifies that this aspect of the proposed rule would not have a significant economic impact on a substantial number of small entities. However, SBA requests data from the public that would enable SBA to determine any additional costs as a result of the proposed rule to require reporting of these items.

The new reporting and recordkeeping requirements in the proposed rule for SBA Supervised Lenders that have not yet been discussed would occur on an ad hoc basis (e.g. change in financial condition). They generally would be triggered by exceptional circumstances. Thus given their ad hoc and exceptional nature, they would not likely have a significant economic impact on a substantial number of small entities.

The proposed rule would require all CDC financial statements that are filed with the CDC annual report submission to be audited. Currently, under OMB approved information collection number 3245–0074, SBA only requires CDCs with a 504 loan portfolio balance of $20 million dollars or more to have the financial statements of be audited. (See SBA Form 1253.) For CDCs with a 504 loan portfolio balance of less than $20 million dollars, the financial statements currently need only be reviewed by an independent CPA and be prepared in accordance with GAAP. SBA is extending the audit requirement to all CDCs to facilitate a better assessment of the performance and financial strength of all CDCs. In addition, this requirement is part of SBA's incorporation of Single Audit Act requirements into its regulations. SBA estimates that at least 70 of the 270 CDCs already maintain audited financial statements, SBA also estimates that the cost of auditing the financial statements beyond the current review requirement for the estimated remaining 200 is approximately $4,000 per CDC (based upon an average additional 40 hours × $100 per hour of auditor time). This $4,000 annually is not an excessive cost for CDCs, all of which can routinely engage in financings in the million dollar range. Based on this, SBA certifies that the extension of this requirement would not likely have a significant economic impact on a substantial number of small entities.

B. Capital Adequacy: Only SBLCs are presently subject to the minimum capital requirements currently found in 13 CFR 120.470. The proposed rule would require SBLCs quarterly compliance with its minimum capital requirement. It would also require that NFRLs provide the SBA with a quarterly certification that they are in compliance with their state regulator's minimum capital requirement. In addition, the proposed rule would broaden the existing definition of capital, making it more consistent with that of other Federal Financial Institution Regulators, by allowing SBA Supervised Lenders to count retained earnings towards their regulatory capital requirement. SBA asserts that broadening the types of capital that are eligible towards the SBA capital requirements would have no adverse financial impact on small Lenders. In fact, allowing retained earnings to count toward an SBA Supervised Lender's regulatory capital would allow those SBLCs with significant retained earnings on their balance sheet to increase the size of their 7(a) portfolio without necessitating any additional injection of permanent capital. SBA, therefore, certifies that this aspect of the rule will not have a significant economic impact on a substantial number of small entities.

C. Enforcement Provisions: The proposed rule would list the types of, grounds for, and procedures governing SBA enforcement actions within consolidated enforcement regulations for all SBA Lenders, Microloan Intermediaries, and NTAPs. The general enforcement provisions for SBA Lenders, Microloan Intermediaries, and NTAPs follow, for the most part, the same format that was established for the CDC program. The enforcement provisions for SBA Supervised Lender specific and SBLC specific actions follow recent legislation codified at 15 U.S.C. 650 et. seq. Because SBA anticipates that enforcement actions would occur on an exception basis, SBA does not anticipate that these provisions would have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612. SBA, therefore, certifies that the proposed rule would not have a significant impact on a substantial number of small entities.

D. Bureau of PCLP Oversight: SBA proposes to establish the Bureau of PCLP Oversight in accordance with statutory guidance to address undercapitalization in the LLRFs of Premier Certified Lenders (PCLP CDCs). Of the approximately 270 CDCs, less than 20 of them have PCLP authority. These are generally the larger CDCs, with portfolios which have a total outstanding portfolio balance of $5.1

billion. SBA, therefore, certifies that the proposed rule Bureau of PCLP Oversight provision would not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act: SBA has determined that this proposed rule would impose additional reporting and recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C. Chapter 35. Specifically, SBA would revise OMB approved information collection number 3245–0077 to include NFRLs in SBA's current reporting requirements for SBLCs. SBA would also revise 3245–0077 to add four reporting requirements for all SBA Supervised Lenders and one reporting requirement just for SBLCs. In addition, the proposed rule would also revise OMB approved information collection number 3245–0074 to extend to all CDCs a certain requirement in reporting that applied only to CDCs with 504 loan portfolio balances of $20 million or more. Finally, the proposed rule would add a review/examination reporting requirement.

Under the proposed rule, NFRLs, like SBLCs, would have to file (i) Annual Reports (including audited financial statements); (ii) Reports of Administrative and Legal Proceedings; (iii) Stockholder Reports; (iv) Reports of Changes (in organization and financing); (v) notice of capital impairment; and (vi) other reports as required by SBA. The new reporting requirements would mean that both NFRLs and SBLCs would also have to file: (i) Quarterly Condition Reports (including certain certifications); (ii) Reports of Changes in Financial Condition (also including certain certifications); (iii) notice of a change in auditors; and (iv) Capital Restoration Plans, where applicable. In addition, SBLCs eligible to be exempt from the SBLC supervision and enforcement statutory provisions would have to report on direct examination activity and regulation by Federal Financial Institution Regulators or state banking regulators under proposed § § 120.1510 and 1511. Also, under the proposed rule, all CDC (not just CDCs with a 504 loan portfolio of $20 million dollars or more) would be required to have their annual financial statements that they submit to SBA, to be audited. Finally, the proposed rule would provide for self-assessments and corrective action plans, as applicable, for SBA Lenders, Microloan Intermediaries and NTAPs.

This proposed rule would also extend SBLC recordkeeping requirements to NFRLs in proposed § 120.461 and would add a new recordkeeping requirement for all SBA Supervised Lenders. Specifically NFRLs, like SBLCs, would be required to retain a permanent record of certain substantiating documents for the financial statements and reports submitted to SBA. Such documents would include corporate charters and bylaws, applications for eligibility determination, capital stock certificates or stubs, general and subsidiary ledgers and journals, stock ledgers, stock transfer registers, and all minute books. The proposed rule would also require NFRLs, like SBLCs, to retain all documents and materials related to or supporting an SBA loan, such as applications for financing, participation and escrow accounts, and financing instruments, for a period of 6 years following final disposition of the loan. Many NFRLs may already retain much of this information for other purposes.

Under the proposed rule, the new recordkeeping requirement would apply to SBA Supervised Lenders. In particular, SBA Supervised Lenders would be required to maintain a capital adequacy plan. Under proposed § 120.462, the capital adequacy plan would detail Board of Director approved capital adequacy goals towards maintaining the financial institution's financial strength.

The titles, descriptions of respondents and the information collections are discussed below. In addition, SBA has provided an estimate of the annual reporting and recordkeeping burdens.

SBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of SBA's functions, including whether the information would have a practical utility; (2) the accuracy of SBA's estimate of the burden of the proposed collections 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 through the use of automated collection techniques, when appropriate, and other forms of information technology.

Please send comments by the closing date for comment for this proposed rule to David Rostker, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503 and to Bryan Hooper, Associate Administrator for Lender Oversight, Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

I. SBA Supervised Lender Reporting and Recordkeeping Requirements

The following authorities, description of respondents, statement of needs and purposes, and estimated hourly cost to respondents is applicable to the reports and recordkeeping to be included in revision to OMB approved information collection number 3245–0077 for SBA Supervised Lenders.

Authority: SBA is authorized pursuant to 15 U.S.C. 650(a) and 15 U.S.C. 634(b)(7) to collect this information associated with examining the safety and soundness of SBA Supervised Lenders.

Description of Respondents: The respondents for the below listed information collections would consist of all SBA Supervised Lenders. Currently there are approximately 100 (14 SBLCs and 58 NFRLs).

Statement of Needs and Purposes: The reports and recordkeeping requirements would facilitate safety and soundness examinations and appropriate supervision of SBA's licensed SBLCs and NFRLs. Annual and interim financial information would be analyzed by program management to timely assess SBA Supervised Lenders' financial strength, as well as compliance, with relevant program regulations (e.g., capital and SBLC licensing regulations). Other reporting requirements would update program management on the operational status of the SBA Supervised Lender and timely notify SBA of (i) changes in structure, personnel, auditors, and financial condition and (ii) potential financial exposure. Informed, SBA as supervisor and guarantor of 50 to 85% of an SBA Supervised Lender's portfolio, could intervene (where appropriate) to protect the interests of the United States.

Estimated Cost to Respondents: SBA estimates a cost of $10,390 per SBA Supervised Lender (or approximately $748,080 for all SBA Supervised Lenders; 14 SBLCs and 58 NFRLs) to comply with the below listed information collections. The $10,390 per SBA Supervised Lender includes $8,000 for the annual report audit (80 hours × $100 per hour) plus $2,390 for staff time to support the information collections (approximately 18 hours CFO time @ $100 per hour and 18 hours staff time @ $30 per hour). The hourly estimates are based on an informal survey of SBA Supervised Lenders. While a few of the information collections, like the annual and quarterly condition reports are required, most are ad hoc and occur on an exception basis. The hourly costs are derived from salary and benefit rate

surveys of the AICPA and International Association of Administrative Professionals. This $628,080 increase from the current OMB approved collection is mainly attributable to the extension of the information collection to the 58 NFRLs, and SBA also believes that this number will be dramatically reduced to the extent that many or some of the NFRLs already maintain this information for other purposes.

Below is a listing of those reports and recordkeeping requirements that would be included in the revision to OMB approved information collection number 3245–0077.

A. Annual Audit Report [No SBA Form Number]

Summary: The Annual Audited Report would primarily consist of an SBA Supervised Lender's annual audited financial statements. The Annual Report would be due to SBA within three months after the SBA Supervised Lender's fiscal year end.

B. Legal and Administrative Proceedings [No SBA Form Number]

Summary: Under proposed § 120.464(a)(3), each SBA Supervised Lender would submit a report of any legal or administrative proceeding, by or against the SBA Supervised Lender, or against any officer, director or employee of the SBA Supervised Lender for an alleged breach of official duty.

C. Stockholder Report [No SBA Form Number]

Summary: Under proposed § 120.464(a)(4), all SBA Supervised Lenders would be required to submit to SBA copies of any report or publications concerning financial operations furnished to its stockholders.

D. Report of Changes [No SBA Form Number]

Summary: Under the proposed § 120.464(a)(5), all SBA Supervised Lenders would be required to submit a copy of any changes in the SBA Supervised Lender's organization or financing (e.g., change in type of organization, acquisition by or change of parent, change in primary financing entity, etc.).

E. Notice of Capital Impairment [No SBA Form Number]

Summary: Proposed § 120.462(d) would require all SBA Supervised Lenders to provide SBA prompt written notice of capital impairment.

F. Other Reports [No SBA Form Number]

Summary: Proposed rule § 120.464(a)(5) would require all SBA Supervised Lenders to submit such other reports as SBA may from time to time require by written directive.

G. Quarterly Condition Report and Certifications [No SBA Form Number]

Summary: Under proposed § 120.464(a)(2), all SBA Supervised Lenders would be required to submit a Quarterly Condition Report to SBA within 45 days following the end of each calendar quarter. The content of the Quarterly Condition Report would include the SBA Supervised Lender's interim financial statements, which may be internally prepared. SBA Supervised Lenders would be required to apply uniform definitions to categories of nonperforming loans and recovery amounts on liquidated loans within the reports. The Quarterly Condition Report would also contain a certification by the SBA Supervised Lender as to compliance with laws, completeness, and accuracy and may contain a certification as to capital requirement compliance.

H. Changes in Financial Condition Report [No SBA Form Number]

Summary: Proposed § 120.464(a)(6) would require SBA Supervised Lenders to file with SBA a report on any material change in financial condition within ten days after management becomes aware of the changes, except when reporting capital impairment under proposed § 120.462(d).

I. Notice of Change in Auditor [No SBA Form Number]

Summary: Proposed § 120.463(d) would require SBA Supervised Lenders to notify SBA in writing if it discharged or changed auditors.

J. Capital Restoration Plan [No SBA Form Number]

Summary: Proposed § 120.462(e) would require an SBA Supervised Lender to file a written capital restoration plan with SBA generally within 45 days of the date the SBA Supervised Lender receives or is deemed to have received notice that it has not met its minimum capital requirement.

K. Other Regulated SBLC Report [No SBA Form Number]

Summary: Proposed § § 120.1510 and 120.1511 would require an SBLC that is directly examined by a Federal Financial Institution Regulator or State banking regulator to certify to SBA in writing the extent to which its lending activities are subject to such regulation. It would also require such an Other Regulated SBLC to report to SBA on its interactions with its Federal Financial Institution Regulator or State banking regulator to the extent allowed by law.

L. Records Retention, In General

Summary: Proposed § 120.461(b) and (c) require SBA Supervised Lenders to maintain and preserve certain records with immediate availability of specific documents (e.g. general and subsidiary ledgers, general journals, bylaws, stock transfer ledgers). The provision provides for electronic preservation, if the original is available for retrieval within a reasonable period.

M. Capital Adequacy Plan

Summary: Proposed § 120.462 would require SBA Supervised Lenders' Board of Directors to determine capital adequacy goals and to establish, adopt, and maintain a capital plan.

II. CDC Reporting Requirements

The following corresponds to the revisions to OMB approved information collection number 3245–0074, CDC Annual Report Guide.

Authority: SBA is authorized to collect this information under 15 U.S.C. 687(f).

Description of Respondents: The respondents would consist of all CDCs. Currently, there are approximately 270.

Estimated Cost to Respondents: SBA estimates a cost of $4,120 per CDC (or approximately $1,112,400 for all CDCs) to comply with the information collection as revised. The $4,120 cost per CDC includes $4,000 for the elevated audit requirement (40 hours × $100 per hour for auditors) plus an additional $120 for staff time (4 hours CDC staff time @ $30 per hour) working with the auditors. The hourly costs are derived from a salary and benefit rate survey of the International Association of Administrative Professionals. This $885,600 increase in total cost to all CDCs would be attributable to the cost of requiring audited financial statements. However, SBA believes the cost is likely much less, since many of these CDCs likely already maintain audited financial statements.

Summary: Proposed § 120.826 would be revised to require that each CDC have financial statements audited annually by an independent CPA. This change would extend to all CDCs the requirement that financial statements be audited currently only required for CDCs with a 504 loan portfolio balance of $20 million dollars or more.

Need and Purpose: Collection of annual audited financial statements is critical to allowing SBA to assess accurately CDCs' financial strength and for the purpose of lender oversight.

III. SBA Lender, Microloan Intermediary, and NTAP Reporting Requirements

The following authorities, description of respondents, statement of needs and purposes and estimated hourly cost to respondents are applicable to the review/examination reporting requirements for SBA Lenders, Microloan Intermediaries, and NTAPs.

A. Self-Assessment

Authority: SBA is authorized to collect self-assessment information under 15 U.S.C. 634(b)(7) and 15 U.S.C. 650.

Description of Respondents: The respondents would consist of SBA Lenders, Microloan Intermediaries, and NTAPS.

Estimated Cost to Respondents: SBA estimates a cost of $430 per SBA Lender, Microloan Intermediary, or NTAP or $8,600 for all those required during a year to submit a self-assessment certification or self-assessment report. SBA estimates requiring 20 self-assessments a year. This cost would consist of $30 for administrative staff to prepare the self-assessment certification or report (one hour × $30 hour) and $400 for CFO composition time (four hours × $100 per hour). The hourly estimates are based on an informal survey of SBA Lenders by OCRM financial analysts.

Summary: Proposed Section 120.1025 would provide that ''SBA may conduct off-site reviews and monitoring * * * including SBA Lenders', Intermediaries', or NTAPs' self-assessments.''

Need and Purpose: Generally, SBA would consider requiring a self-assessment to confirm corrective actions implemented or in lieu of targeted or limited scope reviews. Self-assessments are a cost effective means of overseeing and monitoring the SBA performance and compliance of SBA Lenders, Micro-loan Intermediaries, and NTAPs.

B. Corrective Action Plan

Authority: SBA is authorized to collect this information under 15 U.S.C. 634(b)(7) and 15 U.S.C. 650.

Description of Respondents: The respondents would consist of SBA Lenders, Microloan Intermediaries, and NTAPs that receive an onsite review or examination assessment of acceptable with corrective action or less than acceptable, or as otherwise required by SBA.

Estimated Cost to Respondents: SBA estimates a cost of $430 per SBA Lender, Microloan Intermediary, or NTAP or $64,500 for all those required during a year to submit a corrective action plan. SBA estimates requiring 150 corrective actions a year. This number may be dramatically reduced as SBA Lenders, Microloan Intermediaries, and NTAPs improve SBA program operations. The cost would consist of $30 for administrative staff to prepare the corrective action plan (one hour × $30 per hour) and $400 for CFO composition time (four hours × $100 per hour). The hourly estimates are based on an informal survey of SBA Lenders by OCRM financial analysts.

Summary: Proposed Section 120.1055 would provide that SBA Lenders, Microloan Intermediaries, and NTAPs must submit proposed corrective action plans, if requested.

Need and Purpose: The reports would facilitate corrective action to address SBA Lender, Microloan Intermediary, or NTAP deficiencies identified generally during reviews and examinations.

Proposal

List of Subjects in 13 CFR Part 120

Loan Programs—business, Small businesses.

For the reasons set forth above, SBA proposes to amend 13 CFR part 120 as follows:

PART 120—BUSINESS LOANS

1. The authority citation for part 120 is revised to read as follows:

Authority: 15 U.S.C. 634(b)(6), (b)(7), (b)(14), (h), and note, 636(a), (h) and (m), 650, 687(f), 696(3), and 697(a) and (e).

2. Amend § 120.10 by adding new definitions ''Acceptable Risk Rating'', ''Federal Financial Institutions Regulator'', ''Less Than Acceptable Risk Rating'', ''Management Official'', ''Non-Federally Regulated Lender'', ''Other Regulated SBLC'', ''Risk Rating'', ''SBA Lender'', ''SBA Supervised Lender'', and ''Small Business Lending Company'', and revising the definition for ''Lender'' to read as follows:

§ 120.10 Definitions.

* * * * *

Acceptable Risk Rating is an SBA-assigned Risk Rating, currently defined by SBA as ''1'', ''2'' or ''3'' on a scale of 1 to 5, which represents an acceptable level of risk as determined by SBA, and which may be revised by SBA from time to time as published in the **Federal Register** through notice and comment.

* * * * *

Federal Financial Institution Regulator is the federal banking regulator of a 7(a) Lender and may include the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, and the Farm Credit Administration.

* * * * *

Lender or 7(a) Lender is an institution that has executed a participation agreement with SBA under the guaranteed loan program.

Less Than Acceptable Risk Rating is an SBA-assigned Risk Rating, currently defined by SBA as ''4'' or ''5'' on a scale of 1 to 5, which represents an unacceptable level of risk as determined by SBA, and which may be revised by SBA from time to time as published in the **Federal Register** through notice and comment.

* * * * *

Management Official is an officer, director, general partner, manager, employee participating in management, agent or other participant in the management of the affairs of the SBA Supervised Lender's activities under the 7(a) program.

Non-Federally Regulated Lender (NFRL) is a business concern that is authorized by the SBA to make loans under section 7(a) and is subject to regulation by a state but whose lending activities are not subject to regulation by a Federal Financial Institution Regulator.

* * * * *

Other Regulated SBLC is a Small Business Lending Company whose SBA operations receive regular safety and soundness examinations by a state banking regulator or a Federal Financial Institution Regulator, and which meets the requirements set forth in § 120.1511.

* * * * *

Risk Rating is an SBA internal composite rating assigned to individual SBA Lenders, Intermediaries, or NTAPs that reflects the risk associated with the SBA Lender's or Intermediary's portfolio of SBA loans or with the NTAP. Risk Ratings currently range from one to five, with one representing the least risk and five representing the most risk, and may be revised by SBA from time to time as published in the **Federal Register** through notice and comment.

* * * * *

SBA Lender is a 7(a) Lender or a CDC. This term includes SBA Supervised Lenders.

SBA Supervised Lender is a 7(a) Lender that is either (1) a Small Business Lending Company or (2) a NFRL.

* * * * *

Small Business Lending Company (SBLC) is a nondepository lending institution that is SBA licensed and is authorized by SBA to only make loans pursuant to section 7(a) of the Small Business Act and loans to Intermediaries in SBA's Microloan program. SBA has imposed a moratorium on licensing new SBLCs since January 1982.

* * * * *

3. Amend § 120.410 by revising paragraphs (a), (d) and (e) and adding a new paragraph (f) to read as follows:

§ 120.410 Requirements for all participating Lenders.

* * * * *

(a) Have a continuing ability to evaluate, process, close, disburse, service, liquidate and litigate small business loans including, but not limited to:

(1) Holding sufficient permanent capital to support SBA lending activities (for SBA Lenders with a Federal Financial Institution Regulator, meeting capital requirements for an adequately capitalized financial institution is considered sufficient permanent capital to support SBA lending activities; for SBLCs, meeting its SBA minimum capital requirement; and for NFRLs meeting its state minimum capital requirement); and

(2) Maintaining satisfactory SBA performance, as determined by SBA in its sole discretion. The 7(a) Lender's Risk Rating, among other factors, will be considered in determining satisfactory SBA performance;

* * * * *

(d) Be supervised and examined by either:

(1) A Federal Financial Institution Regulator,

(2) A state banking regulator satisfactory to SBA, or

(3) SBA;

(e) Be in good standing with SBA as defined in § 120.420(f) (and determined by SBA in its sole discretion) and, as applicable, with an SBA Lender's state regulator or Federal Financial Institution Regulator; and

(f) Operate in a safe and sound condition using commercially reasonable lending policies, procedures, and standards employed by prudent Lenders.

4. Remove the undesignated center heading immediately preceding § 120.414.

§ 120.414 [Removed]

5. Remove § 120.414

§ 120.415 [Removed]

6. Remove § 120.415.

7. In § 120.420, revise paragraph (f) introductory text and paragraphs (f)(3) and (4) to read as follows:

§ 120.420 Definitions.

* * * * *

(f) *Good Standing*—In general, a Lender is in ''good standing'' with SBA if it: * * *

(3) Is not under investigation or indictment for, or has not been convicted of, or had a judgment entered against it for felony or fraud, or charges relating to a breach of trust or violation of a law or regulation protecting the integrity of business transactions or relationships, unless the Lender Oversight Committee has determined that good-standing exists despite the existence of such factors.

(4) Does not have any officer or employee who has been under investigation or indictment for, or has been convicted of or had a judgment entered against him for, a felony or fraud, or charges relating to a breach of trust or violation of a law or regulation protecting the integrity of business transactions or relationships, unless the Lender Oversight Committee has determined that good standing exists despite the existence of such person.

* * * * *

8. Amend § 120.424 by revising paragraph (a), redesignating paragraphs (b), (c), (d), and (e) as (c), (d), (e), and (f), and adding new paragraph (b) to read as follows:

§ 120.424 What are the basic conditions a Lender must meet to securitize?

* * * * *

(a) Be in good standing with SBA as defined in § 120.420(f) of this chapter and determined by SBA in its sole discretion;

(b) Have satisfactory SBA performance as determined by SBA, in its sole discretion. The Lender's Risk Rating, among other factors, will be considered in determining satisfactory SBA performance;

* * * * *

§ 120.425 [Amended]

9. Amend § 120.425(c)(2) by removing ''SBA Securitization Committee'' and add in its place ''Lender Oversight Committee'' in the fourth sentence.

§ 120.426 [Amended]

10. Amend § 120.426 by removing ''SBA Securitization Committee'' and add in its place ''Lender Oversight Committee'' in the second sentence.

11. Amend § 120.433 by revising paragraph (a), redesignating paragraph (b) as (c), and adding a new paragraph (b) to read as follows:

§ 120.433 What are the SBA's other requirements for sales and sales of participating interests?

* * * * *

(a) The Lender must be in good standing with SBA as defined in § 120.420(f) and determined by SBA in its sole discretion;

(b) the Lender has satisfactory SBA performance, as determined by SBA in its sole discretion. The Lender's Risk Rating, among other factors, will be considered in determining satisfactory SBA performance; and

* * * * *

12. Amend § 120.434 by revising paragraph (b), redesignating paragraphs (c), (d), (e), (f), and (g) as (d), (e), (f), (g), and (h), and adding a new paragraph (c) to read as follows:

§ 120.434 What are SBA's requirements for loan pledges?

* * * * *

(b) The Lender must be in good standing with SBA as defined in § 120.420(f) and determined by SBA in its sole discretion;

(c) The Lender has satisfactory SBA performance, as determined by SBA, in its sole discretion. The Lender's Risk Rating, among other factors, will be considered in determining satisfactory SBA performance;

* * * * *

13. Revise § 120.435 introductory text to read as follows:

§ 120.435 Which loan pledges do not require notice to or consent by SBA?

Notwithstanding the provisions of § 120.434(e), 7(a) loans may be pledged for the following purposes without notice to or consent by SBA:

* * * * *

§ 120.442 [Removed]

14. Remove § 120.442

15. Amend § 120.451 by revising the last sentence in paragraph (a), revising paragraph (b)(3), removing paragraph (c), redesignating paragraph (d) as (c), redesignating paragraph (e) as (d) and revising its last sentence, and adding a new paragraph (e) to read as follows:

§ 120.451 How does a Lender become a PLP Lender?

(a) * * * The SBA field office will forward its recommendation to an SBA

centralized loan processing center which will submit its recommendation and supporting documentation to the appropriate Office of Capital Access official in accordance with Delegations of Authority for final decision.

(b) * * *

(3) Has satisfactory SBA performance, as determined by SBA in its sole discretion. The Lender's Risk Rating, among other factors, will be considered in determining satisfactory SBA performance.

(c) * * *

(d) * * * The recertification decision is made by the appropriate Office of Capital Access official in accordance with Delegations of Authority and is final.

(e) When a PLP lender's Supplemental Guaranty Agreement expires, SBA may recertify the Lender as a PLP Lender for an additional term not to exceed two years. Prior to recertification, SBA will review a PLP Lender's loans, policies, procedures, SBA performance, Risk Rating, review or examination results, and other risk related information as determined by SBA.

* * * * *

§ 120.454 [Removed]

16. Remove § 120.454

§ 120.455 [Removed]

17. Remove § 120.455

18. Add new undesignated center heading before § 120.460 to read as follows:

SBA Supervised Lenders

19. Add new § 120.460 to read as follows:

§ 120.460 What are SBA's additional requirements for SBA Supervised Lenders?

(a) In general. In addition to complying with SBA's requirements for SBA Lenders, an SBA Supervised Lender must meet the additional requirements set forth in this regulation and the SBA Supervised Lender regulations that follow.

(b) Operations and internal controls. Each SBA Supervised Lender's board of directors (or management, if the SBA Supervised Lender is a division of another 'company and does not have its own board of directors) must adopt an internal control policy which provides adequate direction to the institution in establishing effective control over and accountability for operations, programs, and resources. The internal control policy must, at a minimum:

(1) Direct management to assign responsibility for the internal control function (covering financial, credit, credit review, collateral, and administrative matters) to an officer or officers of the SBA Supervised Lender;

(2) Adopt and set forth procedures for maintenance and periodic review of the internal control function; and

(3) Direct the operation of a program to review and assess the SBA Supervised Lender's assets. The asset review program policies must specify the following:

(i) Loan, loan-related asset, and appraisal review standards, including standards for scope of selection for review (of any such loan, loan-related asset or appraisal) and standards for work papers and supporting documentation;

(ii) Asset quality classification standards consistent with the standardized classification systems used by the Federal Financial Institution Regulators;

(iii) Specific internal control requirements for SBA Supervised Lender's major asset categories (cash and investment securities), lending, and the issuance of debt;

(iv) Specific internal control requirements for the SBA Supervised Lender's oversight of Lender Service Providers; and

(v) Standards for training to implement the asset review program.

20. Add new § 120.461 to read as follows:

§ 120.461 What are SBA's additional requirements for SBA Supervised Lenders concerning records?

(a) *Report filing.* All SBA Supervised Lender-specific reports (including all SBLC-only reports) must be filed with the appropriate Office of Capital Access official in accordance with Delegations of Authority.

(b) *Maintenance of records.* An SBA Supervised Lender must maintain at its principal business office accurate and current financial records, including books of accounts, minutes of stockholder, directors, and executive committee meetings, and all documents and supporting materials relating to the SBA Supervised Lender's transactions. However, securities held by a custodian pursuant to a written agreement must be exempt from this requirement.

(c) *Permanent preservation of records.* An SBA Supervised Lender must permanently preserve in a manner permitting immediate (one business day) retrieval the following documentation for the financial statements and other reports required by § 120.464 (and the accompanying certified public accountant's opinion):

(1) All general and subsidiary ledgers (or other records) reflecting asset, liability, capital stock and additional paid-in capital, income, and expense accounts;

(2) All general and special journals (or other records forming the basis for entries in such ledgers); and

(3) The corporate charter, bylaws, application for determination of eligibility to participate with SBA, and all minutes books, capital stock certificates or stubs, stock ledgers, and stock transfer registers.

(d) *Other preservation of records.* An SBA Supervised Lender must preserve for at least 6 years following final disposition of each individual SBA loan:

(1) All applications for financing;

(2) Lending, participation, and escrow agreements;

(3) Financing instruments; and

(4) All other documents and supporting material relating to such loans, including correspondence.

(e) *Electronic preservation.* Records and other documents referred to in this section may be preserved electronically if the original is available for retrieval within 15 working days.

21. Add new § 120.462 to read as follows:

§ 120.462 What are SBA's additional requirements on capital maintenance for SBA Supervised Lenders?

(a) *Capital adequacy.* The board of directors (or management, if the SBA Supervised Lender is a division of another company and does not have its own board of directors) of each SBA Supervised Lender must determine capital adequacy goals; that is, the total amount of capital needed to assure the SBA Supervised Lender's continued financial viability and provide for any necessary growth. The minimum standards set in § 120.471 for SBLCs and those established by state regulators for NFRLs are not to be adopted as the ideal capital level for a given SBA Supervised Lender. Rather, the minimum standards are to serve as minimum levels of capital that each SBA Supervised Lender must maintain to protect against the credit risk and other general risks inherent in its operation.

(b) *Capital plan.* The board of directors of each SBA Supervised Lender must establish, adopt, and maintain a formal written capital plan. The plan must include any interim capital targets that are necessary to achieve the SBA Supervised Lender's capital adequacy goals as well as the minimum capital standards. The plan must address any projected dividend goals, equity retirements, or any other anticipated action that may decrease the SBA Supervised Lender's capital. The

plan must set forth the circumstances in which capital retirements (e.g., dividends, distributions of capital or purchase of treasury stock) can occur. In addition to factors described above that must be considered in meeting the minimum standards, the board of directors must also address the following factors in developing the SBA Supervised Lender's capital adequacy plan:

(1) Management capability;

(2) Quality of operating policies, procedures, and internal controls;

(3) Quality and quantity of earnings;

(4) Asset quality and the adequacy of the allowance for loan losses within the loan portfolio;

(5) Sufficiency of liquidity; and

(6) Any other risk-oriented activities or conditions that warrant additional capital (e.g., portfolio growth rate).

An SBA Supervised Lender must keep its capital plan current, updating it at least annually or more often as operating conditions may warrant.

(c) *Certification of compliance.* Within 45 days of the end of each fiscal quarter, each SBA Supervised Lender must furnish the SBA with a calculation of capital and certification of compliance with its minimum capital requirement as set forth in § § 120.471, 120.472, or 120.474, as applicable, for SBLCs and as established by state regulators for NFRLs. The SBA Supervised Lender's chief financial officer must certify the calculation to be correct. The quarterly calculation and certification of compliance may be included in the SBA Supervised Lender's Quarterly Condition Report.

(d) *Capital impairment.* An SBA Supervised Lender must meet its minimum regulatory capital requirement and avoid capital impairment. Capital impairment exists if an SBA Supervised Lender fails to meet its minimum regulatory capital requirement under §§ 120.471, 120.472, and 120.474 for SBLCs or as established by state regulators for NFRLs. An SBA Supervised Lender must provide the appropriate Office of Capital Access official in accordance with Delegations of Authority written notice of any failure to meet its minimum capital requirement within 30 calendar days of the month-end in which the impairment occurred. Unless otherwise waived by the appropriate Office of Capital Access official in accordance with Delegations of Authority in writing, an SBA Supervised Lender may not present any loans to SBA for guarantee until the impairment is cured. SBA may waive the presentment prohibition for good cause as determined by SBA in its discretion. In the case of differences in calculating capital or capital requirements between the SBA Supervised Lender and SBA, SBA's calculations will prevail until differences between the two calculations are resolved.

(e) *Capital restoration plan*—(1) *Filing requirement.* An SBA Supervised Lender must file a written capital restoration plan with SBA within 45 days of the date that the SBA Supervised Lender provides notice to SBA under paragraph (d) of this section above or receives notice from SBA (whichever is earlier) that the SBA Supervised Lender has not met its minimum capital requirement, unless SBA notifies the SBA Supervised Lender in writing that the plan is to be filed within a different time period.

(2) *Plan content.* An SBA Supervised Lender must detail the steps it will take to meet its minimum capital requirement; the time within which each step will be taken; the timeframe for accomplishing the entire capital restoration; and the person or department at the SBA Supervised Lender charged with carrying out the capital restoration plan.

(3) *SBA response.* SBA will provide written notice of whether the capital restoration plan is approved or not or whether SBA will seek additional information. If the capital restoration plan is not approved by SBA, the SBA Supervised Lender will submit a revised capital restoration plan within the timeframe specified by SBA.

(4) *Amendment of capital restoration plan.* An SBA Supervised Lender that has submitted an approved capital restoration plan may, after prior written notice to and approval by SBA, amend the plan to reflect a change in circumstance. Until such time as a proposed amendment has been approved, the SBA Supervised Lender must implement the capital restoration plan as approved prior to the proposed amendment.

(5) *Failure.* If an SBA Supervised Lender fails to submit a capital restoration plan that is acceptable to SBA within its sole discretion within the required timeframe, or fails to implement, in any material respect as determined by SBA in its sole discretion, its SBA approved capital restoration plan within the plan timeframe, SBA may undertake enforcement actions under § 120.1500.

22. Add new § 120.463 to read as follows:

§ 120.463 Regulatory accounting—What are SBA's regulatory accounting requirements for SBA Supervised Lenders?

(a) *Books and records.* The books and records of an SBA Supervised Lender must be kept on an accrual basis in accordance with Generally Accepted Accounting Principles (GAAP) as promulgated by the Financial Accounting Standards Board (FASB), supplemented by Regulatory Accounting Principles (RAP) as identified by SBA in Policy, Procedural or Information Notices, from time to time.

(b) *Annual audit.* Each SBA Supervised Lender must have its financial statements audited annually by a certified public accountant experienced in auditing financial institutions. The audit must be performed in accordance with generally accepted auditing standards as adopted by the Auditing Standards Board of the American Institute of Certified Public Accountants (AICPA). Annually, the auditor must issue an audit report with an opinion as to the fairness of the SBA Supervised Lender's financial statements and their compliance with GAAP.

(c) *Auditor qualifications.* The audit shall be conducted by an independent public accountant who:

(1) Is registered or licensed to practice as a certified public accountant, and is in good standing, under the laws of the state or other political subdivision of the United States in which the SBA Supervised Lender's principal office is located;

(2) Agrees in the engagement letter with the SBA Supervised Lender to provide the SBA with access to and copies of any work papers, policies, and procedures relating to the services performed;

(3) (i) Is in compliance with the AICPA Code of Professional Conduct; and

(ii) Meets the independence requirements and interpretations of the Securities and Exchange Commission and its staff;

(4) Has received a peer review or is enrolled in a peer review program, that meets AICPA guidelines; and

(5) Is otherwise acceptable to SBA.

(d) *Change of auditor.* If an SBA Supervised Lender discharges or changes its auditor, it must notify SBA in writing within ten days of the occurrence. Such notification must provide:

(1) The name, address, and telephone number of the discharged auditor; and

(2) If the discharge/change involved a dispute over the financial statements, a reasonably detailed statement of all the

reasons for the discharge or change. This statement must set out the issue in dispute, the position of the auditor, the position of the SBA Supervised Lender, and the effect of each position on the balance sheet and income statement of the SBA Supervised Lender.

(e) *Specific accounting requirements.* (1) Each SBA Supervised Lender must maintain an allowance for losses on loans and other assets that is sufficient to absorb all probable and estimated losses that may reasonably be expected based on the SBA Supervised Lender's historical performance and reasonably-anticipated events. Each SBA Supervised Lender must maintain documentation of its loan loss allowance calculations and analysis in sufficient detail to permit the SBA to understand the assumptions used and the application of those assumptions to the assets of the SBA Supervised Lender.

(2) The unguaranteed portions of loans determined to be uncollectible must be charged-off promptly. If the portion determined to be uncollectible by the SBA Supervised Lender is different from the amount determined by its auditors or the SBA, the SBA Supervised Lender must charge-off such amount as the SBA may direct.

(3) Each SBA Supervised Lender must classify loans as:

(i) ''Nonaccrual'', if any portion of the principal or interest is determined to be uncollectible and

(ii) ''Formally restructured,'' if the loan meets the ''troubled debt restructuring'' definition set forth in FASB Statement of Financial Accounting Standards No. 15, Accounting by Debtors and Creditors for Troubled Debt Restructurings.

(4) When one loan to a borrower is classified as nonaccrual or formally restructured, all loans to that borrower must be so classified unless the SBA Supervised Lender can document that the loans have independent sources of repayment.

(f) *Valuing loan servicing rights and residual interests.* Each SBA Supervised Lender must account for loan sales transactions and the valuation of loan servicing rights in accordance with GAAP. At the end of each quarter, the SBA Supervised Lender must review for reasonableness the existing environmental assumptions used in the valuation. Particular attention must be given to interest rate and repayment rate assumptions. Assumptions considered no longer reasonable must be modified and modifications must be reflected in the valuation and must be documented and supported by a market analysis. Work papers reflecting the analysis of assumptions and any resulting adjustment in the valuation must be maintained for SBA review in accordance with § 120.461. SBA may require a SBA Supervised Lender to use industry averages for the valuation of servicing rights.

23. Add new § 120.464 to read as follows:

§ 120.464 Reports to SBA.

(a) An SBA Supervised Lender must submit the following to SBA:

(1) *Annual Report.* Within three months after the close of each fiscal year, each SBA Supervised Lender must submit to SBA two copies of an annual report including audited financial statements as prepared by a certified public accountant in accordance with § 120.463. Specifically, the annual report must, at a minimum, include the following:

(i) Audited balance sheet;

(ii) Audited statement of income and expense;

(iii) Audited reconciliation of capital accounts;

(iv) Audited source and application of funds;

(v) Such footnotes as are necessary to an understanding of the report;

(vi) Auditor's letter to management on internal control weaknesses; and

(vii) The auditor's report.

(2) *Quarterly Condition Reports.* By the 45th calendar day following the end of each calendar quarter, each SBA Supervised Lender must submit a Quarterly Condition Report in a form and content as the SBA may prescribe from time to time. At a minimum, the Quarterly Condition Report must include the SBA Supervised Lender's quarterly financial statements, which may be internally prepared. The SBA Supervised Lender must apply uniform definitions to categories of nonperforming loans and include recovery amounts on liquidated loans. SBA may, on a case-by-case basis, depending on an SBA Supervised Lender's size and the quality of its assets, adjust the requirements for content and frequency of filing Quarterly Condition Reports.

(3) *Legal and Administrative Proceeding Report.* Each SBA Supervised Lender must report any legal or administrative proceeding by or against the SBA Supervised Lender, or against any officer, director or employee of the SBA Supervised Lender for an alleged breach of official duty, within ten business days after initiating or learning of the proceeding, and also must notify the SBA of the terms of any settlement or final judgment. The SBA Supervised Lender must include such information in any reporting required under other provisions of SBA regulations.

(4) *Stockholder Reports.* Each SBA Supervised Lender must submit to SBA a copy of any report furnished to its stockholders in any manner, within 30 calendar days after submission to stockholders, including any prospectus, letter, or other document, concerning the financial operations or condition of the SBA Supervised Lender.

(5) *Reports of Changes.* Each SBA Supervised Lender must submit to SBA a summary of any changes in the SBA Supervised Lender's organization or financing (within 30 calendar days of the change), such as:

(i) Any change in its name, address or telephone number;

(ii) Any change in its charter, bylaws, or its officers or directors (to be accompanied by a statement of personal history on the form approved by SBA);

(iii) Any change in capitalization, including such types of change as are identified in these regulations;

(iv) Any changes affecting an SBA Supervised Lender's eligibility to continue to participate as an SBA Supervised Lender; and

(v) Notice of any pledge of stock (within 30 calendar days of the transaction) if 10 percent or more of the stock is pledged by any person (or group of persons acting in concert) as collateral for indebtedness.

(6) *Report of Changes in Financial Condition.* In addition to other reports required under these regulations, each SBA Supervised Lender must submit a report to SBA on any material change in financial condition. The SBA Supervised Lender must submit such report promptly but no later than ten days after its management becomes aware of such change (except as provided for in § 120.462(d)). Failure to promptly notify SBA concerning a material change in financial condition may lead to enforcement action.

(7) *Other Reports.* Each SBA Supervised Lender must submit such other reports as SBA from time to time may in writing require.

(b) *Preparing financial reports for filing.* Each SBA Supervised Lender must prepare financial reports:

(1) In accordance with all applicable laws, regulations, procedures, standards, and such instructions and specifications and in such form and media format as may be prescribed by SBA from time to time;

(2) On an accrual basis, in accordance with GAAP principles and such other accounting requirements, standards, and procedures as may be prescribed by the SBA from time to time;

(3) that contain all applicable footnotes in accordance with GAAP principles, one of which includes a brief analysis of how the SBA Supervised Lender complies with SBA's capital regulations, as applicable; and

(4) in such manner as to facilitate the reconciliation of these reports with the books and records of the SBA Supervised Lender.

(c) *Responsibility for assuring the accuracy of filed financial reports.* Each financial report filed with SBA must be certified as having been prepared in accordance with all applicable regulations, SOPs, notices, and instructions and to be a true, accurate, and complete representation of the financial condition and financial performance of the SBA Supervised Lender to which it applies. The reports must be certified by the officer of the reporting SBA Supervised Lender named for that purpose by action of the institution's board of directors. If the institution's board of directors has not acted to name an officer to certify the correctness of its reports of financial condition and financial performance, then the reports must be certified by the president or chief executive officer of the reporting SBA Supervised Lender.

(d) *Waiver.* The appropriate Office of Capital Access official in accordance with Delegations of Authority may in his/her sole discretion waive any § 120.464 reporting requirement for SBA Supervised Lenders for good cause (including, but not limited to, where an SBA Supervised Lender has a relatively small SBA loan portfolio), as determined by SBA. SBA Supervised Lenders must request the waiver in writing and include all supporting reasons and documentation. The waiver decision of the appropriate Office of Capital Access official in accordance with Delegations of Authority is final.

24. Add new § 120.465 to read as follows:

§ 120.465 Civil penalty for late submission of required reports.

(a) *Obligation to submit required reports by applicable due dates.* SBA Supervised Lenders must submit complete reports by the due dates described in the regulations or as directed in writing by SBA. SBA considers any report that an SBA Supervised Lender sends to SBA by the applicable due date but that is submitted only in part, to have not been submitted by the applicable due date. SBA also considers any report that is postmarked by the due date to be submitted by the due date.

(b) *Amount of civil penalty.* For each day past the due date for such report, the SBA Supervised Lender must pay to SBA a civil penalty of not more than $5,000 per day per report. Such civil penalty continues to accrue until and including the date upon which SBA Supervised Lender submits the complete report. In determining the amount of the civil penalty to be assessed, SBA may consider the financial resources and good faith of the SBA Supervised Lender, the gravity of the violation, the history of previous violations and any such other matters as justice may require.

(c) *Notification of amount of civil penalty.* SBA will notify the SBA Supervised Lender in writing of the amount of civil penalties imposed either upon receiving the required complete report or at such other time as SBA determines. SBA Supervised Lender must pay this amount to SBA within 30 days of the date of SBA's written demand.

(d) *Identification during examination.* SBA may also impose on an SBA Supervised Lender a civil penalty as described in this section if SBA discovers, during an examination pursuant to subpart I of this Part 120 or otherwise, that SBA Supervised Lender did not submit a required report by the due date.

(e) *Extensions of submission due dates.* (1) SBA Supervised Lender may request in writing to SBA that SBA extend its report due date. The request must reference the report and its due date, state the reasonable cause for extension, and assert how much additional time is needed in order to submit a complete report. SBA will advise SBA Supervised Lender in writing as to whether it approved or denied the extension request. If SBA determines that there is reasonable cause to grant an extension and it is not due to willful neglect, SBA will establish a new due date. Such determination as to willful neglect and reasonable cause is in SBA's sole discretion. SBA will consider the following factors in determining willful neglect:

(i) Whether SBA Supervised Lender failed to file required reports for more than two reporting periods and

(ii) If SBA provided SBA Supervised Lender notice of the failure to file and SBA Supervised Lender failed to respond or failed to provide a reasonable explanation for the filing failure in its response.

(2) If SBA disapproves the extension, the due date remains the same. The civil penalty accrues regardless of whether SBA Supervised Lender files an extension request. If SBA approves the extension, SBA will waive the civil penalty that has accrued so far for that particular report. However, a new civil penalty will accrue if SBA Supervised Lender does not submit a complete report by the new due date established by SBA.

(f) *Requests for reduction or exemption.* (1) An SBA Supervised Lender may request a reduction or exemption from the civil penalty in writing to SBA. The request must reference the required report, its due date and the amount sought for reduction, and state in detail the reasons for the reduction. SBA will consider the following factors:

(i) Whether there is reasonable cause for failure to file timely and it was not due to willful neglect;

(ii) Whether SBA Supervised Lender has demonstrated to SBA's satisfaction that it has modified its internal procedures to comply with reporting requirements in the future; or

(iii) Whether SBA Supervised Lender has demonstrated to SBA's satisfaction, based on financial information fully disclosed together with its request, that it would have difficulty paying the civil penalty assessed.

(2) SBA must also determine that a reduction or exemption is not inconsistent with the public interest or the protection of SBA.

(3) SBA may in writing approve the exemption, reduce the civil penalty, or deny the exemption.

(4) If SBA grants the reduction request or denies the reduction or exemption, SBA Supervised Lender must pay the amount owed within 30 days of the letter date. Civil penalties will accrue while the request is pending.

(g) *Reconsideration of decisions.* An SBA Supervised Lender may request in writing to the Associate Administrator for Capital Access (AA/CA) to reconsider its request for extension, reduction, or exemption. The reconsideration request must be received by SBA within 30 days of the date of the letter denying the SBA Supervised Lender of any such request. SBA will not consider untimely requests. SBA Supervised Lender must include any additional information or documentation to support its reconsideration request. SBA will issue a written decision on the reconsideration request. The decision is a final agency decision. If on reconsideration, a civil penalty remains due, SBA Supervised Lender must pay to SBA the civil penalty within 30 days of the written decision or as otherwise directed. Civil penalties will continue to accrue while the reconsideration request is pending.

(h) *Other enforcement actions.* SBA may seek additional remedies for failure to timely file reports as authorized by law.

(i) *Exception for affiliate of SBLC.* Such civil penalties do not apply to any affiliate of an SBLC that procures at least 10% of its annual purchasing requirements from small manufacturers.

25. Revise § 120.470 to read as follows:

§ 120.470 What are SBA's additional requirements for SBLCs?

In addition to complying with SBA's requirements for SBA Lenders and SBA Supervised Lenders, an SBLC must meet the requirements contained in this regulation and the SBLC regulations that follow.

(a) *Lending.* An SBLC may only make:

(1) Loans under section 7(a) (except section 7(a)(13) of the Act in participation with SBA); and/or

(2) SBA guaranteed loans to Intermediaries (see subpart G of this part). Such loans are subject to the same conditions as guaranteed loans made to Intermediaries by 7(a) Lenders.

(b) *Business structure.* An SBLC must be a corporation (profit or non-profit) or a limited liability company or limited partnership.

(c) *Written agreement.* An SBLC must sign a written agreement with SBA.

(d) *Dual control.* An SBLC must maintain dual control over disbursement of funds and withdrawal of securities.

(1) An SBLC may disburse funds only by checks or wire transfers authorized by signatures of two or more officers covered by the SBLC's fidelity bond, except that checks in an amount of $1,000 or less may be signed by one bonded officer, provided that such action is permitted under the SBLC's fidelity bond.

(2) There must be two or more bonded officers, or one bonded officer and a bonded employee to open safe deposit boxes or withdraw securities from safekeeping. The SBLC must furnish to each depository bank, custodian, or entity providing safe deposit boxes a certified copy of the resolution implementing control procedures.

(e) *Fidelity insurance.* An SBLC must maintain a Brokers Blanket Bond, Standard Form 14, or Finance Companies Blanket Bond, Standard Form 15, or such other form of coverage as SBA may approve, in a minimum amount of $2,000,000 executed by a surety holding a certificate of authority from the Secretary of the Treasury pursuant to 31 U.S.C. 9304–9308.

(f) *Common control.* (1) An SBLC must not control, be controlled by, or be under common control with another SBLC.

(2) In the case of a purchase of an SBLC by an organization that already owns an SBLC, the purchasing entity will have six months to submit a plan to SBA for the divestiture of one of the SBLCs. All divestiture plans must be approved by SBA and SBA may withhold approval in its sole discretion. Divestiture of the SBLC must occur within one year of purchase date.

(3) Without prior written SBA approval, an Associate of one SBLC must not be an Associate of another SBLC or of any entity which directly or indirectly controls, or is under common control with, another SBLC.

(4) For purposes of this regulation, common control means a condition where two or more SBLCs, either through ownership, management, contract, or otherwise, are under the Control of one group or Person (as defined in § 145.985 of this chapter or successor regulation). Two or more SBLCs are presumed to be under common control if they are Affiliates of each other by reason of common ownership or common officers, directors, or general partners.

(5) ''Affiliate'' has the meaning set forth in § 121.103 of this chapter.

(6) ''Control'' means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an SBLC or other concern, whether through the ownership of voting securities, by contract, or otherwise. The common control presumption may be rebutted by evidence satisfactory to SBA.

(g) *Management.* An SBLC must employ full time professional management.

(h) *Borrowed funds.* In general, an SBLC may not be capitalized with borrowed funds. Shareholders owning 10 percent or more of any class of its stock must not use personally-borrowed funds to purchase the stock unless the net worth of the shareholder is at least twice the amount borrowed or unless the shareholder receives SBA's prior written approval for a lower ratio.

26. Revise § 120.471 to read as follows:

§ 120.471 What are the minimum capital requirements for SBLCs?

(a) *Minimum capital requirements.* Each SBLC must maintain, at a minimum, unencumbered paid-in capital and paid-in surplus of at least $1,000,000, or ten percent of the aggregate of its share of all outstanding loans, whichever is more.

(b) *Composition of capital.* For purposes of complying with paragraph (a) of this section, capital consists only of one or more of the following:

(1) Common stock;

(2) Preferred stock that is noncumulative as to dividends and does not have a maturity date;

(3) Additional paid-in capital representing amounts paid for stock in excess of the par value;

(4) Retained earnings of the business; and/or

(5) For limited liability companies and limited partnerships, capital contributions must not be subject to repayment at any specific time, must not be subject to withdrawal and must have no cumulative priority return.

(c) *Voluntary capital reduction.* Without prior written SBA approval, an SBLC must not voluntarily reduce its capital, or repurchase and hold more than 2 percent of any class or combination of classes of its stock.

(d) *Issuance of securities.* Without prior written SBA approval, an SBLC must not issue any securities (including stock options and debt securities) except stock dividends.

27. Revise § 120.472 to read as follows:

§ 120.472 Higher individual minimum capital requirement.

The Associate Administrator for Capital Access (AA/CA) may require, under § 120.473(d), an SBLC to maintain a higher level of capital, if the AA/CA determines, in his/her sole discretion, that the SBLC's level of capital is potentially inadequate to protect the SBA from loss due to the financial failure of the SBLC. The factors to be considered in the determination will vary in each case and may include, for example:

(a) Specific conditions or circumstances pertaining to the SBLC;

(b) Exigency of those circumstances or potential problems;

(c) Overall condition, management strength, and future prospects of the SBLC and, if applicable, its parent or affiliates;

(d) The SBLC's liquidity and existing capital level, and the performance of its SBA loan portfolio;

(e) The management views of the SBLC's directors and senior management; and

(f) Other risk-related factors, as determined by SBA.

§ 120.476 [Removed]

28. Remove § 120.476.

§§ 120.473, 120.474, and 120.475 [Redesignated as §§ 120.475, 120.476, and 120.490]

29. Redesignate §§ 120.473, 120.474, and 120.475 as §§ 120.475, 120.476, and 120.490, respectively.

30. In newly redesignated § 120.475, revise the second sentence of paragraph (a) introductory text and revise paragraph (b) to read as follows:

§ 120.475 Change of ownership or control.

(a) * * * An SBLC must request approval of any such change from the appropriate Office of Capital Access official in accordance with Delegations of Authority.* * *

(b) If transfer of ownership or control is subject to the approval of any State or Federal chartering, licensing, or other regulatory authority, copies of any documents filed with such authority must, at the same time, be transmitted to the appropriate Office of Capital Access official in accordance with Delegations of Authority.

31. Add new § 120.473 to read as follows:

§ 120.473 Procedures for determining individual minimum capital requirement.

(a) *Notice.* When SBA determines that an individual minimum capital requirement above that set forth in this subpart or other legal authority is necessary or appropriate for a particular SBLC, SBA will notify the SBLC in writing of the proposed individual minimum capital requirement, the date by which it should be reached and will provide an explanation of why the requirement proposed is considered necessary or appropriate.

(b) *SBLC response.* The SBLC may respond to the notice. The response should include any matters which the SBLC would have SBA consider in deciding whether individual minimum capital requirements should be established for the SBLC, what those capital requirements should be, and, if applicable, when they should be achieved. The response must be in writing and delivered to the AA/CA within 30 days after the date on which the SBLC received the notice. SBA may shorten the time for response when, in the opinion of SBA, the condition of the SBLC so warrants, provided that the SBLC is informed promptly of the new time period, or the SBLC consents to the shortening of its response time. In its discretion, SBA may extend the time period for good cause.

(c) *Failure to respond.* An SBLC that does not respond within 30 days or such other time period as may be specified by SBA will have waived any objections to the proposed minimum capital requirement and the deadline for its achievement. Failure to respond will also constitute consent to the individual minimum capital requirement.

(d) *Decision.* After the close of the SBLC's response period, the AA/CA will decide, based on a review of SBA reasons for proposing the individual minimum capital requirement, the SBLC's response, and other information concerning the SBLC, whether the individual minimum capital requirement should be established for the SBLC and, if so, the requirement and the date it will become effective. The SBLC will be notified of the decision in writing. The notice will include an explanation of the decision; except for a decision not to establish an individual minimum capital requirement for the SBLC.

(e) *Submission of plan.* The decision may require the SBLC to develop and submit to SBA, within a time period specified, an acceptable plan to reach the individual minimum capital requirement by the date required.

(f) *Change in circumstances.* If, after SBA's decision in paragraph (d) of this section, there is a change in the circumstances affecting the SBLC's capital adequacy or its ability to reach the required individual minimum capital requirement by the specified date, either the SBLC or the AA/CA may propose to the other a change in (i) the individual minimum capital requirement for the SBLC, (ii) the date when the individual minimum must be achieved, and/or (iii) the SBLC's plan (if applicable). The AA/CA may decline to consider proposals that are not based on a significant change in circumstances or are repetitive or frivolous. Pending a decision by the AA/CA on reconsideration, SBA's original decision and any plan required under that decision will continue in full force and effect.

31. Add new § 120.474 to read as follows:

§ 120.474 Relation to other actions.

In lieu of, or in addition to, the procedures in this subpart, the individual minimum capital requirement for an SBLC may be established or revised through a written agreement or cease and desist proceedings under Subpart I of this Part.

32. Amend § 120.630 by adding paragraph (a)(5) to read as follows:

§ 120.630 Qualifications to be a Pool Assembler.

(a) * * *

(5) For any pool assembler that is an SBA Lender, that the SBA Lender has satisfactory SBA performance, as determined by SBA in its sole discretion. The Lender's Risk Rating, among other factors, will be considered in determining satisfactory SBA performance.

* * * * *

33. Revise § 120.702(b) to read as follows:

§ 120.702 Are there limitations on who can be an Intermediary or on where an Intermediary may operate?

* * * * *

(b) *Limitation to one state.* An Intermediary may not operate in more than one state unless the appropriate Office of Capital Access official in accordance with Delegations of Authority determines that it would be in the best interests of the small business community for it to operate across state lines.

34. Amend § 120.710 by revising paragraphs (c), (d), the introductory text of paragraph (e) and paragraph (e)(1) to read as follows:

§ 120.710 What is the Loan Loss Reserve Fund?

* * * * *

(c) *SBA review of Loan Loss Reserve Fund.* After an Intermediary has been in the Microloan program for five years, it may request SBA's appropriate Office of Capital Access official in accordance with Delegations of Authority to reduce the percentage of its Portfolio which it must maintain in its LLRF to an amount equal to the actual average loan loss rate during the preceding five-year period. Upon receipt of such request, he/she will review the Intermediary's annual loss rate for the most recent five-year period preceding the request.

(d) *Reduction of Loan Loss Reserve Fund.* The appropriate Office of Capital Access official in accordance with Delegations of Authority has the authority to reduce the percentage of an Intermediary's Portfolio that it must maintain in its LLRF to an amount equal to the actual average loan loss rate during the preceding five-year period. The appropriate Office of Capital Access official in accordance with Delegations of Authority cannot reduce the LLRF to less than ten percent of the Portfolio.

(e) *What must an Intermediary demonstrate to get a reduction in Loan Loss Reserve Fund?* To receive a reduction in its LLRF, an Intermediary must:

(1) Have satisfactory SBA performance, as determined by SBA in its sole discretion. The Intermediary's Risk Rating, among other factors, will be considered in determining satisfactory SBA performance; and

* * * * *

§ 120.716 [Removed]

35. Remove § 120.716.

36. Amend § 120.812 to add a new sentence at the end of paragraph (c) to read as follows:

§ 120.812 Probationary period for newly certified CDCs.

* * * * *

(c) * * * To be considered for permanent CDC status or an extension of probation, the CDC must have satisfactory SBA performance, as determined by SBA in its sole discretion. The CDC's Risk Rating, among other factors, will be considered in determining satisfactory SBA performance.

* * * * *

37. Amend § 120.820 to add a new paragraph (c) to read as follows:

§ 120.820 CDC non-profit status and good standing.

* * * * *

(c) Must have satisfactory SBA performance, as determined by SBA in its sole discretion. The CDC's Risk Rating, among other factors, will be considered in determining satisfactory SBA performance.

38. Revise § 120.826 as follows:

§ 120.826 Basic requirements for operating a CDC.

A CDC must operate in accordance with the following requirements:

(a) *In general.* CDCs must meet all 504 Loan Program Requirements. In its Area of Operations, a CDC must market the 504 program, package and process 504 loan applications, close and service 504 loans, and if authorized by SBA, liquidate and litigate 504 loans. It must supply to SBA current and accurate information about all certification and operational requirements, and maintain the records and submit all reports required by SBA.

(b) *Operations and internal controls.* Each CDC's board of directors must adopt an internal control policy which provides adequate direction to the institution for effective control over and accountability for operations, programs, and resources. The board adopted internal control policy must, at a minimum:

(1) Direct management to assign the responsibility for the internal control function (covering financial, credit, credit review, collateral, and administrative matters) to an officer or officers of the CDC;

(2) Adopt and set forth procedures for maintenance and periodic review of the internal control function;

(3) Direct the operation of a program to review and assess the CDC's 504-related loans. For the 504 review program, the internal control policies must specify the following:

(i) Loan, loan-related collateral, and appraisal review standards, including standards for scope of selection (for review of any such loan, loan-related collateral or appraisal) and standards for work papers and supporting documentation;

(ii) Loan quality classification standards consistent with the standardized classification systems used by the Federal Financial Institution Regulators;

(iii) Specific control requirements for the CDC's oversight of Lender Service Providers; and

(iv) Standards for training to implement the loan review program; and

(4) Address other control requirements as may be established by SBA.

(c) *Annual Audited Financial Statements.* Each CDC must have its financial statements audited annually by a certified public accountant that is independent and experienced in auditing financial institutions. The audit must be performed in accordance with generally accepted auditing standards as adopted by the Auditing Standards Board of the American Institute of Certified Public Accountants (AICPA). The auditor must be independent, as defined by the AICPA, of the CDC. Annually, the auditor must issue an opinion as to the fairness of the CDC's financial statements and their compliance with GAAS.

(d) *Auditor qualifications.* The audit must be conducted by an independent certified public accountant who:

(1) Is registered or licensed to practice as a public accountant, and is in good standing, under the laws of the state or other political subdivision of the United States in which the CDC's principal office is located;

(2) Agrees in the engagement letter with the CDC to provide the SBA with access to and copies of any work papers, policies, and procedures relating to the services performed;

(3)(i) Is in compliance with the AICPA Code of Professional Conduct; and

(ii) Meets the independence requirements and interpretations of the Securities and Exchange Commission and its staff;

(4) Has received a peer review or is enrolled in a peer review program that meets AICPA guidelines; and

(5) Is otherwise acceptable to SBA.

(e) *Single Audit Act requirements for not-for-profit CDCs.* Not-for-profit CDCs that are subject to the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507) (the Single Audit Act) must comply with the audit requirements contained in the Single Audit Act and revised OMB Circular A–133, Audits of States, Local Governments, and Non-Profit Organizations. To the extent that any of such audit requirements conflict with SBA's regulations, the Single Audit Act and OMB Circular A–133 requirements control.

39. Amend § 120.830 to revise paragraph (a) to read as follows:

§ 120.830 Reports a CDC must submit.

* * * * *

(a) An annual report within three months after the end of the CDC's fiscal year (to include audited financial statements of the CDC and any affiliates or subsidiaries of the CDC prepared in accordance with § 120.826(c) and (d)), and such interim reports as SBA may require. The financial statements must, at a minimum, include the following:

(1) Audited balance sheet;

(2) Audited statement of income (or receipts) and expense;

(3) Audited statement of source and application of funds;

(4) Such footnotes as are necessary to an understanding of the report;

(5) Auditor's letter to management on internal control weaknesses; and

(6) The auditor's report.

* * * * *

40. Amend § 120.839 to add two new sentences after the second sentence in the introductory text to read as follows:

§ 120.839 Case-by-case application to make a 504 loan outside of a CDC's Area of Operations.

* * * In addition, the CDC must have satisfactory SBA performance, as determined by SBA in its sole discretion. The CDC's Risk Rating, among other factors, will be considered in determining satisfactory SBA performance. * * *

* * * * *

41. Revise § 120.841(c) to read as follows:

§ 120.841 Qualifications for the ALP.

* * * * *

(c) *CDC reviews.* CDC reviews conducted by SBA must be current (within the last 24 months, if applicable) for applicants for ALP status. The CDC must have received a review assessment of either ''acceptable'' or ''acceptable with corrective actions required''. In addition, the CDC must have satisfactory SBA performance, as determined by SBA in its sole discretion. The CDC's Risk Rating, among other factors, will be considered

in determining satisfactory SBA performance.

* * * * *

42. Revise § 120.845(b) to read as follows:

§ 120.845 Premier Certified Lenders Program (PCLP).

* * * * *

(b) *Application.* A CDC must apply for PCLP status to the Lead SBA Office. The Lead SBA Office will send its written recommendation and the application to SBA's PCLP Loan Processing Center. The PCLP Loan Processing Center will review these materials and forward them to the appropriate Office of Capital Access official in accordance with Delegations of Authority for final determination.

* * * * *

43. Remove the undesignated center heading before § 120.853.

44. Revise the heading for § 120.853 to read as set forth below and remove the first sentence of the section.

§ 120.853 Inspector General audits of CDCs.

45. Remove the undesignated center heading before § 120.854.

§ 120.854 [Removed]

46. Remove § 120.854.

§ 120.855 [Removed]

47. Remove § 120.855.

§ 120.856 [Removed]

48. Remove § 120.856.

49. Revise § 120.956 to read as follows:

§ 120.956 Suspension or revocation of brokers and dealers.

The appropriate Office of Capital Access official in accordance with Delegations of Authority may suspend or revoke the privilege of any broker or dealer to participate in the sale or marketing of Debentures and Certificates for actions or conduct bearing negatively on the broker's fitness to participate in the securities market. SBA must give the broker or dealer written notice, stating the reasons, at least 10 business days prior to the effective date of the suspension or revocation. A broker or dealer may appeal the suspension or revocation made under this section pursuant to the procedures set forth in part 134 of this chapter. The action of this official will remain in effect pending resolution of the appeal.

50. Revise the heading to subpart I and add an undesignated center heading and §§ 120.1000, 120.1005, 120.1010, 120.1015, 120.1025, 120.1050, 120.1051, 120.1055, and 120.1060 to read as follows:

Subpart I—Risk-Based Lender Oversight

Supervision

Sec.
120.1000 Risk-Based Lender Oversight.
120.1005 Bureau of PCLP Oversight.
120.1010 SBA access to SBA Lender, Intermediary, and NTAP files.
120.1015 Risk Rating System.
120.1025 Off-site reviews and monitoring.
120.1050 On-site reviews and examinations.
120.1051 Frequency of on-site reviews and examinations.
120.1055 Review and examination results.
120.1060 Confidentiality of Reports, Risk Ratings, and related Confidential Information.

Subpart I—Risk-Based Lender Oversight

Supervision

§ 120.1000 Risk-Based Lender Oversight.

(a) *Risk-Based Lender Oversight.* SBA supervises, examines, and regulates, and enforces laws against, SBA Supervised Lenders and the SBA operations of SBA Lenders, Intermediaries, and NTAPs.

(b) *Scope.* Most rules and standards set forth in this subpart apply to SBA Lenders as well as Intermediaries and NTAPs. However, SBA has separate regulations for enforcement grounds and enforcement actions for Intermediaries and NTAPs at § 120.1425 and § 120.1540.

§ 120.1005 Bureau of PCLP Oversight.

SBA's Bureau of PCLP Oversight within OCRM, monitors the capitalization of PCLP CDC pilot participants' LLRFs and performs other related functions.

§ 120.1010 SBA access to SBA Lender, Intermediary, and NTAP files.

An SBA Lender, Intermediary, and NTAP must allow SBA's authorized representatives, including representatives authorized by the SBA Inspector General, during normal business hours, access to its files to review, inspect, and copy all records and documents, relating to SBA guaranteed loans or as requested for SBA oversight.

§ 120.1015 Risk Rating System.

(a) *Risk Rating.* SBA may assign a Risk Rating to all SBA Lenders, Intermediaries, and NTAPs on a periodic basis. Risk Ratings are based on certain risk-related portfolio performance factors as set forth in notices or SBA's SOPs and as published from time to time.

(b) *Rating categories.* Risk Ratings fall into one of two broad categories: Acceptable Risk Ratings or Less Than Acceptable Risk Ratings.

§ 120.1025 Off-site reviews and monitoring.

SBA may conduct off-site reviews and monitoring of SBA Lenders, Intermediaries, and NTAPs, including SBA Lenders', Intermediaries' or NTAPs' self-assessments.

§ 120.1050 On-site reviews and examinations.

(a) *On-site reviews.* SBA may conduct on-site reviews of the SBA loan operations of SBA Lenders. The on-site review may include, but is not limited to, an evaluation of the following:

(1) Portfolio performance;

(2) SBA operations management;

(3) Credit administration; and

(4) Compliance with Loan Program Requirements.

(b) *On-site examinations.* SBA may conduct safety and soundness examinations of SBA Supervised Lenders, except SBA will not conduct safety and soundness examinations of Other Regulated SBLCs under §§ 120.1510 and 1511. The on-site safety and soundness examination may include, but is not limited to, an evaluation of:

(1) Capital adequacy;

(2) Asset quality (including credit administration and allowance for loan losses);

(3) Management quality (including internal controls, loan portfolio management, and asset/liability management);

(4) Earnings;

(5) Liquidity;

(6) Compliance with Loan Program Requirements

(c) *On-site reviews/examinations of Intermediaries and NTAPs.* SBA may perform on-site reviews or examinations of Intermediaries and NTAPs.

(d) *Other on-site reviews or examinations.* SBA may perform other on-site reviews/examinations as needed as determined by SBA in its sole discretion.

§ 120.1051 Frequency of on-site reviews and examinations.

SBA may conduct on-site reviews and examinations of SBA Lenders, Intermediaries, and NTAPs on a periodic basis. SBA may consider, but is not limited to, the following factors in determining frequency:

(a) Off-site review/monitoring results, including an SBA Lender's, Intermediary's or NTAP's Risk Rating;

(b) SBA loan portfolio size;

(c) Previous review or examination findings;

(d) Responsiveness in correcting deficiencies noted in prior reviews or examinations; and

(e) Such other risk-related information as SBA, in its sole discretion, determines to be appropriate.

§ 120.1055 Review and examination results.

(a) *Written Reports.* SBA will provide an SBA Lender, Intermediary, and NTAP a copy of SBA's written report prepared as a result of the SBA Lender review or examination (''Report''). The Report may contain findings, conclusions, corrective actions and recommendations. Each director (or manager, in the absence of a Board of Directors) of the SBA Lender, Intermediary, and NTAP, in keeping with his or her responsibilities, must become fully informed regarding the contents of the Report.

(b) *Response to review and examination Reports.* SBA Lenders, Intermediaries, and NTAPs must respond to Report findings and corrective actions, if any, in writing to SBA and, if requested, submit proposed corrective actions and/or a capital restoration plan. An SBA Lender, Intermediary, or NTAP must respond within 30 days from the Report date unless SBA notifies the SBA Lender, Intermediary, or NTAP in writing that the response, proposed corrective actions or capital restoration plan is to be filed within a different time period. The SBA Lender, Intermediary, or NTAP response must address each finding and corrective action. In proposing a corrective action or capital restoration plan, SBA Lender, Intermediary, or NTAP must detail: The steps it will take to correct the finding deficiency; the time within which each step will be taken; the timeframe for accomplishing the entire corrective action; and the person(s) or department at the SBA Lender, Intermediary, or NTAP charged with carrying out the corrective actions or capital restoration plan, as applicable.

(c) *SBA response.* SBA will provide written notice of whether the response and, if applicable, any corrective action or capital restoration plan, is approved, or whether SBA will seek additional information or require other action.

(d) *Failure to respond or to submit or implement an acceptable plan.* If an SBA Lender, Intermediary, or NTAP fails to respond in writing to SBA, respond timely to SBA, or provide a response acceptable to SBA within SBA's sole discretion, or respond to all findings and required corrective actions in a Report, then SBA may take enforcement action under Subpart I. If an SBA Lender, Intermediary, or NTAP that is requested to submit a corrective action plan or capital restoration plan to SBA fails to do so in writing; fails to submit timely such plan to SBA; or fails to submit a plan acceptable to SBA within SBA's sole discretion, then SBA may take enforcement action under § 120.1500 *et. seq.* If an SBA Lender, Intermediary, or NTAP fails to implement in any material respect a corrective action or capital restoration plan within the required timeframe, then SBA may undertake enforcement action under § 120.1500 *et. seq.*

§ 120.1060 Confidentiality of Reports, Risk Ratings and related Confidential Information.

(a) *In general.* Reports and other SBA prepared review or examination related documents are the property of SBA and are loaned to an SBA Lender, Intermediary, or NTAP for its confidential use only. The Reports, Risk Ratings, and related Confidential Information are privileged and confidential as more fully explained in paragraph (b) of this section. The Report, Risk Rating, and Confidential Information must not be relied upon for any purpose other than SBA's Lender oversight and SBA's portfolio management purposes. An SBA Lender, Intermediary, or NTAP must not make any representations concerning the Report (including its findings, conclusions, and recommendations), the Risk Rating, or the Confidential Information. For purposes of this regulation, Report means the review or examination report and related documents. For purposes of this regulation, Confidential Information is defined in the SBA Lender information portal and by notice issued from time to time. Access to the lender information portal may be obtained by contacting the OCRM.

(b) *Disclosure prohibition.* Each SBA Lender, Intermediary, and NTAP is prohibited from disclosing its Report, Risk Rating, and Confidential Information, in full or in part, in any manner, without SBA's prior written permission. An SBA Lender, Intermediary, and NTAP may use the Report, Risk Rating, and Confidential Information for confidential use within its own immediate corporate organization. SBA Lenders, Intermediaries, and NTAPs must restrict access to their Report, Risk Rating and Confidential Information to those of its officers and employees who have a legitimate need to know such information for the purpose of assisting them in improving the SBA Lender's, Intermediary's, or NTAP's SBA program operations in conjunction with SBA's Lender Oversight Program and SBA's portfolio management (for purposes of this regulation, each referred to as a ''permitted party''), and to those for whom SBA has approved access by prior written consent, and to those for whom access is required by applicable law or legal process. If such law or process requires SBA Lender, Intermediary, or NTAP to disclose the Report, Risk Rating, or Confidential Information to any person other than a permitted party, SBA Lender, Intermediary, or NTAP will promptly notify SBA and SBA's Information Provider in writing so that SBA and the Information Provider have, within their sole discretion, the opportunity to seek appropriate relief such as an injunction or protective order prior to disclosure. For purposes of this regulation, ''Information Provider'' means any contractor that provides SBA with the Risk Rating. SBA Lender, Intermediary, and NTAP must ensure that each permitted party is aware of these regulatory requirements and must ensure that each such permitted party abides by them. Any disclosure of the Report, Risk Rating, or Confidential Information other than as permitted by this regulation may result in appropriate action as authorized by law. An SBA Lender, Intermediary, and NTAP will indemnify and hold harmless SBA of the Risk Rating or Confidential Information from and against any and all claims, demands, suits, actions, and liabilities to any degree based upon or resulting from the unauthorized use or disclosure of the Report, Risk Rating, or Confidential Information. Information Provider contact information is available from the Office of Capital Access.

51. In subpart I, add an undesignated center heading and §§ 120.1400, 120.1425, 120.1500, 120.1510, 120.1511, 120.1540, and 120.1600 to read as follows:

Subpart I—Risk-Based Lender Oversight

* * * * *

Enforcement Actions

Sec.

120.1400 Grounds for enforcement actions—SBA Lenders.
120.1425 Grounds for enforcement actions—Intermediaries participating in the Microloan Program and NTAPs.
120.1500 Enforcement actions—SBA Lenders.
120.1510 Other Regulated SBLCs.
120.1511 Certification and other reporting and notification requirements for Other Regulated SBLCs.
120.1540 Enforcement actions—Intermediaries participating in the Microloan Program and NTAPs.

120.1600 General procedures for enforcement actions against SBA Lenders, SBA Supervised Lenders, Other Regulated SBLCs, Management Officials, Other Persons, Intermediaries, and NTAPs.

Enforcement Actions

§ 120.1400 Grounds for enforcement actions—SBA Lenders.

(a) *Agreement.* By making SBA 7(a) guaranteed loans or 504 loans, SBA Lenders automatically agree to the terms, conditions, and remedies in Loan Program Requirements, as promulgated or issued from time to time and as if fully set forth in the SBA Form 750, Loan Guaranty Agreement or other applicable participation, guaranty, or supplemental agreement.

(b) *Scope.* SBA may undertake one or more of the enforcement actions listed in § 120.1500 or as otherwise authorized by law, if SBA determines that the grounds applicable to the enforcement action exist. In general, the grounds listed in paragraph (c) of this section may trigger enforcement actions against any SBA Lender. However, certain enforcement actions against SBA Supervised Lenders, as set forth in paragraphs (d) and (e) of this section, require the existence of certain grounds, and paragraph (f) of this section lists two additional grounds for taking enforcement action against CDCs. Below is a listing of the grounds that trigger enforcement actions against each type of SBA Lender.

(c) *Grounds in general.* Except as provided in paragraphs (d) and (e) of this section, the grounds that may trigger an enforcement action against any SBA Lender (regardless of its Risk Rating) include:

(1) Failure to maintain eligibility requirements for specific SBA programs and delegated authorities, including but not limited to: 7(a), PLP, SBAExpress, Community Express, 504, ALP, PCLP, the alternative loss reserve pilot program and any pilot loan program;

(2) Failure to comply materially with any requirement imposed by Loan Program Requirements;

(3) Making a material false statement or failure to disclose a material fact to SBA (A material fact is any fact which is necessary to make a statement not misleading in light of the circumstances under which the statement was made.);

(4) Not performing underwriting, closing, disbursing, servicing, liquidation, litigation or other actions in a commercially reasonable and prudent manner for 7(a) or 504 loans, respectively, as applicable. Evidence of such performance or actions may include, but is not limited to, the SBA Lender having a repeated Risk Rating or an on-site review/examination assessment which is Less Than Acceptable;

(5) Failure within time period specified to correct an underwriting, closing, disbursing, servicing, liquidation, litigation, or reporting deficiency, or failure in any material respect to take other corrective action, after receiving notice from SBA of a deficiency and the need to take corrective action;

(6) Engaging in a pattern of uncooperative behavior or taking an action that SBA determines is detrimental to an SBA program, that undermines management or administration of a program, or that is not consistent with standards of good conduct;

(7) Repeated failure to correct continuing deficiencies;

(8) Unauthorized disclosure of Reports, Risk Rating, or Confidential Information;

(9) Any other reason that SBA determines may increase SBA's financial risk (for example, repeated Less Than Acceptable Risk Ratings or indictment on felony or fraud charges of an officer, key employee, or loan agent involved with SBA loans for the SBA Lender);

(10) As otherwise authorized by law; or

(11) For immediate suspension of all SBA Lenders from delegated authorities—upon a determination by SBA that one or more of the grounds in paragraph (c) or paragraph (f) of this section, as applicable, exist and, that immediate action is needed to prevent significant impairment of the integrity of the 7(a) or 504 loan program.

(12) For immediate suspension of all SBA Lenders except SBA Supervised Lenders from the authority to participate in the SBA loan program, including the authority to make, service, liquidate, or litigate 7(a) or 504 loans—upon a determination by SBA that one or more of the grounds in paragraph (c) or paragraph (f) of this section, as applicable, exist and, that immediate action is needed to prevent significant impairment of the integrity of the 7(a) or 504 loan program.

(d) *Grounds required for certain enforcement actions against SBA Supervised Lenders (except Other Regulated SBLCs) or as applicable, Other Persons.* For purposes of Subpart I, Other Person means a Management Official, attorney, accountant, appraiser, Lender Service Provider or other individual involved in the SBA Supervised Lender's operations. For the below listed SBA Supervised Lender enforcement actions, the grounds that are required to take the enforcement action are:

(1) *For SBA program suspensions and revocations*—

(i) False statements knowingly made in any required written submission to SBA; or

(ii) An omission of a material fact from any written submission required by SBA; or

(iii) A willful or repeated violation of the Small Business Act (the Act) or SBA regulations; or

(iv) A willful or repeated violation of any condition imposed by SBA with respect to any application, request, or agreement with SBA; or

(v) A violation of any cease and desist order of SBA.

(2) *For SBA program immediate suspension*—SBA may suspend an SBA Supervised Lender, effective immediately, if in addition to meeting the grounds set forth in paragraph (d)(1) of this section, the Administrator (or the Deputy Administrator, only if the Administrator is unavailable to take such action) finds extraordinary circumstances and takes such action in order to protect the financial or legal position of the United States.

(3) *For cease and desist orders*—

(i) A violation of the Act or SBA regulations, or

(ii) Where an SBA Supervised Lender or Other Person engages in or is about to engage in any acts or practices that will violate the Act or SBA's regulations.

(4) *For an emergency cease and desist order*—

(i) Where grounds for cease and desist order are met,

(ii) The Administrator (or the Deputy Administrator, only if the Administrator is unavailable to take such action) finds extraordinary circumstances, and

(iii) In order to protect the financial or legal position of the United States.

(5) *For transfer of Loan portfolio*—

(i) Where a court has appointed a receiver and

(ii) The SBA Supervised Lender is either not in compliance with capital requirements or is insolvent. An SBA Supervised Lender is insolvent within the meaning of this provision when all of its capital, surplus, and undivided profits are absorbed in funding losses and the remaining assets are not sufficient to pay and discharge its contracts, debts, and other obligations as they come due.

(6) *For transfer of servicing activity*—

(i) Where grounds for transfer of Loan portfolio are met or

(ii) Where the SBA Supervised Lender is otherwise operating in an unsafe and unsound condition.

(7) *For order to remove Management Official*—where, in the opinion of the Administrator or his/her delegatee, the Management Official—

(i) Willfully and knowingly committed a substantial violation of the Act, SBA regulation, a final cease and desist order, or any agreement by the Management Official or the SBA Supervised Lender under the Act or SBA regulations, or

(ii) Willfully and knowingly committed a substantial breach of a fiduciary duty of that person as a Management Official and the violation or breach of fiduciary duty is one involving personal dishonesty on the part of such Management Official, or

(iii) The Management Official is convicted of a felony involving dishonesty or breach of trust and the conviction is no longer subject to further judicial review (excludes writ of habeas corpus).

(8) *For order to suspend or prohibit participation of Management Official* (interim measure pending removal)—where SBA is undertaking enforcement action of removal of a Management Official.

(9) *For order to suspend or prohibit participation of Management Official due to criminal charges*—where the Management Official is charged in any information, indictment or complaint authorized by a United States attorney with a felony involving dishonesty or breach of trust.

(e) *Grounds required for certain enforcement actions against SBLCs and Other Regulated SBLCs.*

(1) *Capital directive.* If the AA/CA determines that an SBLC is capitally impaired or is otherwise being operated in an imprudent manner, the AA/CA may, in addition to any other action authorized by law, issue a directive to the SBLC to increase capital consistent with § 120.1500(d)(1).

(2) *Civil action for termination.* If an SBLC violates the Act or SBA regulations, SBA may institute a civil action to terminate SBLC rights, privileges, and the franchise under § 120.1500(d)(2).

(f) *Additional grounds specific to CDCs.* In addition to the grounds set forth in paragraphs (b) and (c) of this section, SBA may take enforcement action against a CDC for:

(1) Failure to receive SBA approval for at least four 504 loans during the last two consecutive fiscal years, or

(2) For PCLP CDCs, failure to establish or maintain a LLRF as required by the PCLP.

§ 120.1425 Grounds for enforcement actions—Intermediaries participating in the Microloan Program and NTAPs.

(a) *Agreement.* By participating in the SBA Microloan or NTAP program, Intermediaries and NTAPs automatically agree to the terms, conditions, and remedies in this Part 120 as if fully set forth in their participation agreement and all other agreements jointly executed by the Intermediary or NTAP and SBA.

(b) *Scope.* SBA may undertake one or more of the enforcement actions listed in § 120.1540, or as otherwise authorized by law, if SBA determines that any of the grounds listed in paragraphs (c) through (e) of this section exist.

(c) *Grounds in general.* For any Intermediary or NTAP, grounds that may trigger enforcement action against the Intermediary or NTAP (regardless of its Risk Rating) include:

(1) Violation of any laws, regulations, or policies of the program; or

(2) Failure to meet any one of the following performance standards:

(i) Coverage of the service territory assigned by SBA, including honoring SBA's determined boundaries of neighboring intermediaries and NTAPs;

(ii) Fulfill reporting requirements;

(iii) Manage program funds and matching funds in a satisfactory and financially sound manner;

(iv) Communicate and file reports within six months after beginning participation in program;

(v) Maintain a currency rate of 85% or more for the Intermediary's SBA Microloan portfolio (that is, loans that are no more than 30 days late in scheduled payments);

(vi) Maintain a default rate in the Intermediary's Microloan portfolio of 15% or less of the cumulative dollars loaned under the program;

(vii) Maintain a staff trained in Microloan program issues and requirements; or

(viii) Any other reason that SBA determines may increase SBA's financial or program risk (for example, repeated Less Than Acceptable Risk Ratings or indictment on felony or fraud charges of an officer, key employee, or loan agent involved with SBA programs for the Intermediary or NTAP).

(d) *Additional grounds specific to Intermediaries.* In addition to the grounds set forth in paragraph (c) of this section, SBA may take enforcement action against an Intermediary for:

(1) Failure to satisfactorily provide in-house technical assistance to Microloan clients and prospective Microloan clients; or

(2) Failure to close and fund a minimum of four Microloans annually.

(e) *Additional grounds specific to NTAPs.* In addition to grounds set forth in paragraph (c) of this section, SBA may take enforcement action against an NTAP for failure to show that, for every 30 clients for which the NTAP provided technical assistance, at least one client received a loan from the private sector.

§ 120.1500 Enforcement actions—SBA Lenders.

Upon a determination that the grounds set forth in § 120.1400 exist, SBA may undertake, in SBA's sole discretion, one or more of the following enforcement actions for each of the types of SBA Lenders listed. SBA will take such action in accordance with procedures set forth in § 120.1600. If enforcement action is taken under this section and the SBA Lender fails to implement required corrective action in any material respect within the required timeframe in response to the enforcement action, SBA may take further enforcement action, as authorized by law.

(a) *Enforcement actions for all SBA Lenders*—(1) *Imposition of portfolio guarantee dollar limit.* SBA may limit the maximum dollar amount that SBA will guaranty on the SBA Lender's SBA loans or debentures.

(2) *Suspension or revocation of delegated authority.* SBA may suspend or revoke an SBA Lender's delegated authority (including, but not limited to PLP, SBA Express, or PCLP delegated authorities).

(3) *Suspension or revocation from SBA program.* SBA may suspend or revoke an SBA Lender's authority to participate in the SBA loan program, including the authority to make, service, liquidate, or litigate 7(a) or 504 loans. Section 120.1400(d)(1) sets forth the grounds for SBA program suspension or revocation of an SBA Supervised Lender (except Other Regulated SBLCs). The grounds for SBA program suspension or revocation for all other SBA Lenders are set forth in § 120.1400(c) and, as applicable, paragraph (f) of § 120.1400. A suspension or revocation will not invalidate a guarantee previously provided by SBA.

(4) *Immediate suspension.* SBA may suspend, effective immediately, an SBA Lender's delegated authority or authority to participate in the SBA loan program, or the authority to make, service, liquidate, or litigate 7(a) or 504 loans. Section 120.1400(d)(2) sets forth the grounds for SBA program immediate suspension of an SBA Supervised Lender (except Other Regulated SBLCs). The grounds for SBA program immediate suspension for all other SBA Lenders and the grounds for immediate

suspension of delegated authority for all SBA Lenders are set forth in § 120.1400(c)(11) and § 120.1400(c)(12).

(5) *Debarment.* In accordance with Part 145 or successor regulation of this Chapter, SBA may take any necessary action to debar a person, as defined in Part 145, including but not be limited to an officer, a director, a general partner, a manager, an employee, an agent or other participant in the affairs of an SBA Lender's SBA operations.

(6) *Other actions available under law.* SBA may take all other enforcement actions against SBA Lenders available under law.

(b) *Enforcement actions specific to 7(a) Lenders.* In addition to those enforcement actions applicable to all SBA Lenders, SBA may suspend or revoke a 7(a) Lender's authority to sell or purchase loans or certificates in the Secondary Market.

(c) *Enforcement actions specific to SBA Supervised Lenders and Other Persons (except Other Regulated SBLCs).* In addition to those enforcement actions listed in paragraphs (a) and (b) of this section, SBA may take any one or more of the following enforcement actions specific to SBA Supervised Lenders and as applicable, Other Persons:

(1) *Cease and desist order.* SBA may issue a cease and desist order against the SBA Supervised Lender or Other Person. The Cease and Desist order may either require the SBA Supervised Lender or the Other Person to take a specific action, or to refrain from a specific action. The Cease and Desist Order may be issued as effective immediately (or as a proposal for Order). SBA may include in the cease and desist order the suspension of authority to lend.

(2) *Remove Management Official.* SBA may issue an order to remove a Management Official from office. SBA may suspend a Management Official from office or prohibit a Management Official from participating in management of the SBA Supervised Lender or in reviewing, approving, closing, servicing, liquidating or litigating any 7(a) loan, or any other activities of the SBA Supervised Lender while the removal proceeding is pending in order to protect an SBA Supervised Lender or the interests of SBA or the United States.

(3) *Initiate request for appointment of receiver.* The SBA may make application to a district court to take exclusive jurisdiction of an SBA Supervised Lender and appoint a trustee or receiver to hold or administer or liquidate the SBA Supervised Lender's assets under direction of the court. The receiver may take possession of the portfolio of 7(a) loans and sell such loans to a third party, and/or take possession of servicing activities of 7(a) loans and sell such servicing rights to a third party.

(4) *Civil monetary penalties for report filing failure.* SBA may seek civil penalties, in accordance with § 120.465, of not more than $5,000 a day against an SBA Supervised Lender that fails to file any regular or special report by its due date as specified by regulation or SBA written directive.

(d) *Enforcement actions specific to SBLCs.* In addition to those supervisory actions listed in paragraphs (a), (b), and (c) of this section, SBA may take the following enforcement actions specific to SBLCs.

(1) *Capital directive.* The AA/CA may issue a capital directive upon a determination that the grounds in § 120.1400(e)(1) exist. A directive may order the SBLC to:

(i) Achieve its minimum capital requirement applicable to it by a specified date;

(ii) Adhere to a previously submitted capital restoration plan (provided under § 120.462 or § 120.1055) to achieve the applicable capital requirement;

(iii) Submit and adhere to a capital restoration plan acceptable to SBA describing the means and time schedule by which the SBLC will achieve the applicable capital requirement (The SBLC must provide its capital restoration plan within 30 days from the date of the SBA order unless SBA notifies the SBLC that the plan is to be filed within a different time period. SBA may perform an on-site examination (generally within 90 days after the restoration plan is submitted) to verify the implementation of the plan and verify that the SBLC meets minimum capital requirements.);

(iv) Refrain from taking certain actions without obtaining SBA's prior written approval (Such actions may include but are not limited to: Paying any dividend; retiring any equity; maintaining a rate of growth that causes further deterioration in the capital percentage; securitizing any unguaranteed portion of its 7(a) loans; or selling participations in any of its 7(a) loans); or

(v) Undertake a combination of any of these or similar actions.

(2) *Civil action for termination.* SBA may institute a civil action to terminate the rights, privileges, and franchises of an SBLC.

(e) *Enforcement actions specific to CDCs.* In addition to those enforcement actions listed in paragraph (a) of this section, SBA may take any one or more of the following enforcement actions specific to CDCs:

(1) Require the CDC to transfer part or all of its existing 504 loan portfolio and/or part or all of its pending 504 loan applications to SBA, another CDC, or any other entity designated by SBA. Any such transfer may be on a temporary or permanent basis, in SBA's sole discretion; or

(2) Instruct the Central Servicing Agent to withhold payment of servicing, late and/or other fee(s) to the CDC.

§ 120.1510 Other Regulated SBLCs.

Other Regulated SBLCs are exempt from §§ 120.465, 120.1050(b), 120.1400(d), 120.1500(c), and 120.1600(b). This exemption is not intended to preclude SBA from seeking any other remedy authorized by law or equity.

§ 120.1511 Certification and other reporting and notification requirements for Other Regulated SBLCs.

(a) *Certification.* An SBLC seeking Other Regulated SBLC status must certify to SBA in writing that its lending activities are subject to regulation by a Federal Financial Institution Regulator or state banking regulator. This certification must be executed by the chair of the board of directors of the SBLC and submitted to SBA either:

(1) Within 60 calendar days of the effective date of this section or

(2) If the SBLC becomes subject to regulation by a Federal Financial Institution Regulator or state banking regulator after the effective date of this section for any reason (e.g. license transfers), within 60 days of the date that the SBLC becomes directly examined and directly regulated by such regulator.

(b) *Contents of Certification.* This certification must include:

(1) The identity of the Federal Financial Institution Regulator or state banking regulator that regulates the lending activities of the SBLC;

(2) A statement that the Federal Financial Institution Regulator or state banking regulator identified in paragraph (b)(1) of this section regularly conducts safety and soundness examinations on the SBLC itself and not only on the SBLC's parent company or affiliate, if any; and

(3) The date of the most recent safety and soundness examination conducted on the SBLC by the Federal Financial Institution Regulator or state banking regulator. To qualify as an Other Regulated SBLC, the SBLC must have received this examination within the past 3 years of the date of certification.

(c) *Notification of examination.* An Other Regulated SBLC must notify SBA

in writing each time a Federal Financial Institution Regulator or state banking regulator conducts a safety and soundness examination, and this notification must be submitted to SBA within 30 calendar days of the SBLC receiving the results of the examination. To retain its status as an Other Regulated SBLC, the Other Regulated SBLC must receive such examination, and provide the written notification to SBA, at least once every two years following initial certification.

(d) *Report.* An Other Regulated SBLC must report in writing to SBA on its interactions with other Federal Financial Institution Regulators or state banking regulator (e.g., the results of the safety and soundness examinations and any order issued against the Other Regulated SBLC), to the extent allowed by law.

(e) *Notification of change in status.* If, for any reason, an Other Regulated SBLC becomes no longer subject to regulation by a Federal Financial Institution Regulator or state banking regulator, the Other Regulated SBLC must immediately notify SBA in writing, and the exemption provided in § 120.1510 will immediately no longer apply.

(f) *Extension of timeframes.* SBA may in its sole discretion extend any timeframe imposed on the SBLC under this section if the SBLC can show good cause for any delay in meeting the time requirement. The SBLC may appeal this decision to the AA/CA.

(g) *Failure to satisfy requirements.* In the event that an SBLC fails to satisfy the requirements set forth in paragraphs (a), (b), and (c) of this section, then the exemption provided in § 120.1510 will not apply to the SBLC.

§ 120.1540 Enforcement actions—Intermediaries participating in the Microloan Program and NTAPs.

Upon a determination that any ground set out in § 120.1425 exists, the SBA may take in its sole discretion, one or more of the following enforcement actions against an Intermediary or NTAP:

(a) Suspension or pre-revocation sanctions which may include, but are not limited to:

(1) Accelerated reporting requirements;

(2) Accelerated loan repayment requirements for outstanding program debt to SBA, as applicable;

(3) Imposition of a temporary lending moratorium, as applicable; or

(4) Imposition of a temporary training moratorium.

(b) Revocation of authority to participate in the Microloan program which will include:

(1) Removal from the program;

(2) Liquidation of Intermediary's Microloan Revolving Fund and Loan Loss Reserve Fund accounts by SBA, and application of the liquidated funds to any outstanding balance owed to SBA;

(3) Payment of outstanding debt to SBA by the Intermediary;

(4) Forfeiture or repayment of any unused grant funds by the Intermediary or NTAP;

(5) Debarment of the organization from receipt of federal funds until loan and grant repayments are met; or

(6) Taking such other actions available under law.

§ 120.1600 General procedures for enforcement actions against SBA Lenders, SBA Supervised Lenders, Other Regulated SBLCs, Management Officials, Other Persons, Intermediaries, and NTAPs.

(a) *In general.* Except as otherwise set forth for the enforcement actions listed in paragraphs (b) and (c) of this section, SBA will follow the procedures listed below.

(1) *SBA's notice of enforcement action.* (i) When undertaking an immediate suspension under § 120.1500(a)(4), or prior to undertaking an enforcement action set forth in § 120.1500(a), (b), and (e) and § 120.1540, SBA will issue a written notice to the affected SBA Lender, Intermediary, or NTAP identifying the proposed enforcement action or notifying it of an immediate suspension. The notice will set forth in reasonable detail the underlying facts and reasons for the proposed action or immediate suspension. If the notice is for a proposed or immediate suspension, SBA will also state the scope and term of the proposed or immediate suspension.

(ii) If a proposed enforcement action or immediate suspension is based upon information obtained from a third party other than the SBA Lender, Intermediary, and NTAP or SBA, SBA's notice of proposed action or immediate suspension will provide copies of documentation received from such third party, or the name of the third party in case of oral information, unless SBA determines that there are compelling reasons not to provide such information. If compelling reasons exist, SBA will provide a summary of the information it received to the SBA Lender, Intermediary, or NTAP.

(2) *SBA Lender, Intermediary, or NTAP's opportunity to object.* (i) An SBA Lender, Intermediary, or NTAP that desires to contest a proposed enforcement action or an immediate suspension must file, within 30 calendar days of its receipt of the notice or within some other term established by SBA in its notice, a written objection with the appropriate Office of Capital Access official in accordance with Delegations of Authority or other SBA official identified in the notice. Notice will be presumed to have been received within five days of the date of the notice unless the SBA Lender, Intermediary, or NTAP can provide compelling evidence to the contrary.

(ii) The objection must set forth in detail all grounds known to the SBA Lender, Intermediary, or NTAP to contest the proposed action or immediate suspension and all mitigating factors, and must include documentation that the SBA Lender, Intermediary, or NTAP believes is most supportive of its objection. An SBA Lender, Intermediary, or NTAP must exhaust this administrative remedy in order to preserve its objection to a proposed enforcement action or an immediate suspension.

(iii) If an SBA Lender, Intermediary, or NTAP can show legitimate reasons as determined by SBA in SBA's sole discretion why it does not understand the reasons given by SBA in its notice of the action, the SBA Lender, Intermediary, or NTAP may request and receive clarification from the Agency. SBA will provide the requested clarification in writing to the SBA Lender, Intermediary, or NTAP or notify the SBA Lender, Intermediary, or NTAP in writing that SBA has determined that SBA Lender's reasons as presented were not legitimate and that such clarification is not necessary. SBA, in its sole discretion, will further advise in writing whether the SBA Lender, Intermediary, or NTAP may have additional time to present its objection to the notice. Requests for clarification must be made to the appropriate Office of Capital Access official in accordance with Delegations of Authority in writing and received by SBA within the 30-day timeframe or the timeframe given by the notice for response.

(iv) An SBA Lender, Intermediary, or NTAP may request additional time to respond to SBA's notice if it can show that there are compelling reasons why it is not able to respond within the 30-day timeframe or timeframe given by the notice for response. If such requests are submitted to the Agency, SBA may, in its sole discretion, provide the SBA Lender, Intermediary, or NTAP with additional time to respond to the notice of proposed action or immediate suspension. Requests for additional time to respond must be made to the appropriate Office of Capital Access official in accordance with Delegations

of Authority or other official identified in the notice in writing and received by SBA within the 30-day timeframe or the timeframe given by the notice for response.

(v) Prior to the issuance of a final decision by SBA, if an SBA Lender, Intermediary, or NTAP can show that there is newly discovered material evidence which, despite the SBA Lender, Intermediary, or NTAP's exercise of due diligence, could not have been discovered within the timeframe given by SBA to respond to a notice, or that there are compelling reasons beyond the SBA Lender, Intermediary, or NTAP's control as to why it was not able to present a material fact or argument to SBA, and that the SBA Lender, Intermediary, or NTAP has been prejudiced by not being able to present such information, the SBA Lender, Intermediary, or NTAP may submit such information to SBA and request that the Agency consider such information in its final decision.

(3) *SBA's notice of final agency decision where SBA Lender, Intermediary, or NTAP filed objection to the proposed action or immediate suspension.* (i) If the affected SBA Lender, Intermediary, or NTAP files a timely written objection to a proposed enforcement action other than an immediate suspension in accordance with this section, SBA must issue a written notice of final decision to the affected SBA Lender, Intermediary, or NTAP advising whether SBA is undertaking the proposed enforcement action and setting forth the grounds for the decision. SBA will issue such a notice of final decision whenever it deems appropriate.

(ii) If the affected SBA Lender, Intermediary, or NTAP files a timely written objection to a notice of immediate suspension, SBA must issue a written notice of final decision to the affected SBA Lender, Intermediary, or NTAP within 90 days of receiving the SBA Lender, Intermediary, or NTAP's objection advising whether SBA is continuing with the immediate suspension. If the SBA Lender, Intermediary, or NTAP submits additional information to SBA (under paragraph (a)(2)(v) of this section) after submitting its objection but before SBA issues its final decision, SBA must issue its final decision within 90 days of receiving such information.

(iii) Prior to issuing a notice of decision, SBA in its sole discretion can request additional information from the affected SBA Lender, Intermediary, NTAP or other parties and conduct any other investigation it deems appropriate. If SBA determines, in its sole discretion, to consider an untimely objection, it must issue a notice of final decision pursuant to this paragraph.

(4) *SBA's notice of final agency decision where no objection filed or untimely objection not considered.* If SBA chooses not to consider an untimely objection or if the affected SBA Lender, Intermediary, or NTAP fails to file a written objection to a proposed enforcement action or an immediate suspension, and if SBA continues to believe that such proposed enforcement action or immediate suspension is appropriate, SBA must issue a written notice of final decision to the affected SBA Lender, Intermediary, or NTAP that SBA is undertaking one or more of the proposed enforcement actions against the SBA Lender, Intermediary, or NTAP or that SBA will continue to pursue an immediate suspension of the SBA Lender, Intermediary, or NTAP. Such a notice of final decision need not state any grounds for the action other than to reference the SBA Lender, Intermediary, or NTAP's failure to file a timely objection, and represents the final agency decision.

(5) *Appeals.* SBA Lender, Intermediary, and NTAP may appeal the final agency decision only in the appropriate federal district court.

(b) *Procedures for certain enforcement actions against SBA Supervised Lenders (except Other Regulated SBLCs) and, where applicable, Management Officials and Other Persons*—(1) *Suspension and revocation actions and cease and desist orders.* If SBA seeks to suspend or revoke loan program authority (including the authority to make, service, liquidate, or litigate SBA loans), or issue a cease and desist order to an SBA Supervised Lender or, as applicable, Other Person, SBA will follow the procedures below in lieu of those in paragraph (a) of this section.

(i) *Show cause order and hearing.* The Administrator will serve upon the SBA Supervised Lender or Other Person an order to show cause why an order suspending or revoking the authority or why a cease and desist order should not be issued. The show cause order will contain a statement of the matters of fact and law asserted by SBA, as well as the legal authority and jurisdiction under which an administrative hearing will be held, and will set forth the place and time of the administrative hearing. The hearing will be conducted by an administrative law judge in accordance with 5 U.S.C. 554–557.

(ii) *Witnesses.* The party calling witnesses will pay the witnesses the same fees and mileage paid witnesses for their appearance in U.S. courts.

(iii) *Administrator finding and order issuance.* If after the administrative hearing, or the SBA Supervised Lender's or Other Person's waiver of the administrative hearing, the Administrator determines that the order should be issued, the Administrator will issue an order to suspend or revoke authority or a cease and desist order, as applicable. The order will include a statement of findings, the grounds and reasons, and will specify the order's effective date. SBA will serve the order on the SBA Supervised Lender or Other Person. The Administrator may delegate the power to issue a cease and desist order or to suspend or revoke loan program authority only if the Administrator is unavailable and only to the Deputy Administrator.

(iv) *Judicial review.* The order issuance constitutes a final agency action. The SBA Supervised Lender or Other Person will have 20 days from the order issuance date to file an appeal in the appropriate federal district court.

(2) *Immediate suspension or immediate cease and desist order.* If SBA undertakes an immediate suspension of authority to participate in the 7(a) loan program or immediate cease and desist order against an SBA Supervised Lender or, as applicable, Other Person, SBA will within two business days follow the procedures set forth in paragraph (b)(1) of this section.

(3) *Removal of Management Official.* If SBA undertakes the removal of a Management Official of an SBA Supervised Lender, SBA will follow the procedures below in lieu of those in paragraph (a) of this section.

(i) *Notice and hearing.* SBA will serve upon the Management Official and the SBA Supervised Lender written notice of intention to remove that includes a statement of the facts constituting the grounds and the date, time, and place for an administrative hearing. The administrative hearing will be held between 30 and 60 days from the date notice is served, unless an earlier or later date is set at the request of the Management Official for good cause shown or at the request of the Attorney General. Failure of the Management Official to appear at the administrative hearing will constitute consent to the removal order. SBA will serve on the SBA Supervised Lender a copy of each notice that is served on a Management Official,

(ii) *Suspension from office or prohibition in participation, pending removal.* The suspension or prohibition will take effect upon service of intention to remove the Management Official or such subsequent time as the Administrator or his/her delegate deems

appropriate and serves notice. It will remain in effect pending the completion of the administrative proceedings to remove and until such time as either SBA dismisses the charges in the removal notice or, if an order to remove or prohibit participation is issued, until the effective date of an order to remove or prohibit. In the case of suspension or prohibition following criminal charges, it may remain in effect until the information, indictment, or complaint is finally disposed of, or until the suspension is terminated by SBA or by order of a district court. A Management Official may appeal to the appropriate federal district court for a stay of the suspension or prohibition pending completion of the administrative hearing not later than 10 days from the suspension or prohibition's effective date.

(iii) *Decision.* SBA may issue the order of removal if the Management Official consents or is convicted of the criminal charges and the judgment is not subject to further judicial review (not including writ of habeas corpus), or if upon a record of a hearing, SBA finds that any of the notice grounds have been established. After the hearing, in the latter case, and within 30 days after SBA has notified the parties that the case has been submitted for final decision, SBA will render a decision (which includes findings of fact upon which the decision is predicated) and issue and serve an order upon each party to the proceeding. The decision will constitute final agency action.

(iv) *Effective date and judicial review.* The removal order will take effect 30 days after date of service upon the SBA Supervised Lender and the Management Official except i) in case of consent which will be effective at the time specified in the order or ii) in case of removal for conviction on criminal charges the order will be effective upon removal order service on the SBA Supervised Lender and the Management Official. The order will remain effective and enforceable, except to the extent it is stayed, modified, terminated, or set aside by the Administrator or a reviewing court. The adversely affected party will have 20 days from the order issuance date to seek judicial review in the appropriate federal district court.

(4) *Receiverships, transfer of assets and servicing activities.* If SBA undertakes the appointment of a receiver for, or the transfer of assets or servicing rights of, an SBA Supervised Lender, SBA will follow the applicable procedures in 15 U.S.C. 650.

(5) *Civil penalties for report filing failure.* If SBA seeks to impose civil penalties against an SBA Supervised Lender for failure to file a report in accordance with SBA regulations or written directives, SBA will follow the procedures set forth for enforcement actions in § 120.465.

(c) *Additional procedures for certain enforcement actions against SBLCs. Capital directive*—(1) *Notice of intent to issue capital directive.* SBA will notify an SBLC in writing of its intention to issue a directive. The notice will state:

(i) Reasons for issuance of the directive and

(ii) The proposed contents of the directive.

(2) *Response to notice.* An SBLC may respond to the notice by stating why a capital directive should not be issued and/or by proposing alternative contents for the capital directive or seeking other appropriate relief. The response must include any information, mitigating circumstances, documentation, or other relevant evidence that supports its position. The response may include a plan for achieving the minimum capital requirement applicable to the SBLC. The response must be in writing and delivered to the SBA within 30 days after the date on which the SBLC received the notice. In its discretion, SBA may extend the time period for good cause. SBA may shorten the 30-day time period:

(i) When, in the opinion of SBA, the condition of the SBLC so requires, provided that the SBLC will be informed promptly of the new time period;

(ii) With the consent of the SBLC; or

(iii) When the SBLC already has advised SBA that it cannot or will not achieve its applicable minimum capital requirement.

Failure to respond within 30 days or such other time period as may be specified by SBA will constitute a waiver of any objections to the proposed capital directive.

(3) *Decision.* After the closing date of the SBLC's response period, or receipt of the SBLC's response, if earlier, SBA may seek additional information or clarification of the response. Thereafter, SBA will determine whether or not to issue a capital directive, and if one is to be issued, whether it should be as originally proposed or in modified form.

(4) *Issuance of a capital directive.* (i) A capital directive will be served by delivery to the SBLC. It will include, or be accompanied by, a statement of reasons for its issuance.

(ii) A capital directive is effective immediately upon its receipt by the SBLC, or upon such later date as may be specified therein, and will remain effective and enforceable until it is stayed, modified, or terminated by SBA.

(5) *Reconsideration based on change in circumstances.* Upon a change in circumstances, an SBLC may request SBA to reconsider the terms of its capital directive or may propose changes in the plan to achieve the SBLC's applicable minimum capital requirement. SBA also may take such action on its own initiative. SBA may decline to consider requests or proposals that are not based on a significant change in circumstances or are repetitive or frivolous. Pending a decision on reconsideration, the capital directive and plan will continue in full force and effect.

(6) *Relation to other administrative actions.* A capital directive may be issued in addition to, or in lieu of, any other action authorized by law, including cease and desist proceedings. SBA also may, in its discretion, take any action authorized by law, in lieu of a capital directive, in response to an SBLC's failure to achieve or maintain the applicable minimum capital requirement.

(7) *Appeals.* The capital directive constitutes a final agency action. An SBLC may appeal the final agency decision only in the appropriate federal district court.

Dated: October 18, 2007.

Steven C. Preston,

Administrator.

[FR Doc. E7–20932 Filed 10–30–07; 8:45 am]

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Part IV

Department of Housing and Urban Development

Additional Waivers Granted to and Alternative Requirements for the State of Mississippi Under Public Laws 109–148 and 109–234; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5051–N–09]

Additional Waivers Granted to and Alternative Requirements for the State of Mississippi Under Public Laws 109–148 and 109–234

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of waivers, and alternative requirements.

SUMMARY: As described in the **SUPPLEMENTARY INFORMATION** section of this Notice, HUD is authorized by statute to waive statutory and regulatory requirements and specify alternative requirements for these disaster recovery grants, upon the request of the state grantee. This Notice describes the additional waivers for the disaster recovery grants made to the State of Mississippi under the subject appropriations acts.

DATES: *Effective Date:* November 5, 2007.

FOR FURTHER INFORMATION CONTACT: Jessie Handforth Kome, Director, Disaster Recovery and Special Issues Division, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7286, Washington, DC 20410; telephone number (202) 708–3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. FAX inquiries may be sent to Ms. Kome at (202) 401–2044. (Except for the ''800'' number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Authority To Grant Waivers

The first Federal Fiscal Year 2006 supplemental appropriation for the Community Development Block Grant (CDBG) program was the Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006 (Pub. L. 109–148, approved December 30, 2005). The second 2006 supplemental appropriation was Chapter 9 of Title II of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 (Pub. L. 109–234, approved June 15, 2006), which appropriates $5.2 billion in Community Development Block Grant funds for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure directly related to the consequences of the covered disasters. These 2006 Acts authorize the Secretary to waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or use by the recipient of these funds and guarantees, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment, upon a request by the State and a finding by the Secretary that such a waiver would not be inconsistent with the overall purpose of the statute. The following additional waivers and alternative requirements for funds provided under either 2006 Act are in response to requests from the State of Mississippi.

The Secretary finds that the following waivers and alternative requirements, as described below, are not inconsistent with the overall purpose of Title I of the Housing and Community Development Act of 1974, as amended, or the Cranston-Gonzalez National Affordable Housing Act, as amended.

Under the requirements of the Department of Housing and Urban Development Act, as amended (42 U.S.C. 3535(q)), regulatory waivers must be published in the **Federal Register**.

Except as described in this and other notices applicable to the State of Mississippi's disaster recovery grants under either 2006 Act, statutory and regulatory provisions governing the Community Development Block Grant program for states, including those at 24 CFR part 570, shall apply to the use of these funds. In accordance with the appropriations acts, HUD will reconsider every waiver in this Notice on the 2-year anniversary of the day this Notice is published.

Waiver Justification

In general, waivers already granted to the State of Mississippi and alternative requirements already specified for CDBG disaster recovery grant funds provided under Pub. L. 109–148 and Pub. L. 109–234 apply. The notices in which these prior waivers and alternative requirements applicable to Mississippi appear are 71 FR 7666, published February 13, 2006; 71 FR 34457, published June 14, 2006; 71 FR 62372, published October 24, 2006; 71 FR 63337, published October 30, 2006; 72 FR 10020, published March 6, 2007; and 72 FR 48808, published August 24, 2007.

The provisions of this Notice do not apply to funds provided under the regular CDBG program. The provisions provide additional flexibility in program design and implementation for the disaster recovery grants.

Eligibility—Tourism. The State plans to provide disaster recovery grants to support the tourism industry and promote travel to communities in the disaster-impacted areas. Tourism industry support, such as a national consumer awareness advertising campaign for an area in general, is ineligible for CDBG assistance. However, Congress did make such support eligible, within limits, for the CDBG disaster recovery funds appropriated for recovery of Lower Manhattan following the September 11, 2001, terrorist attacks. Additionally, an eligibility waiver, on a limited basis, was granted to Louisiana to support the disaster-impacted areas of the State's tourism industry in the June 14, 2006, notice (71 FR 34451). HUD understands that such support can be a useful recovery tool in a damaged regional economy that depends on tourism for many of its jobs and tax revenues. Because the State is proposing advertising and marketing activities rather than direct assistance to tourism-dependent businesses, and because the measures of long-term benefit from the proposed activities must be derived using regression analysis and other indirect means, the waiver will permit use of no more than $5 million for assistance for the tourism industry (as requested by the State) and the assisted activities must be designed to support tourism to the most impacted and distressed areas related to the effects of Hurricane Katrina. The waiver will expire 2 years after the date of this notice, after which previously ineligible support of the tourism industry, such as marketing a community as a whole, will again be ineligible for CDBG disaster recovery funding.

Eligibility—Project-Based Rental Assistance. The State requested a waiver to allow the use of project-based rental assistance (herein referred to as PBRA) to encourage owners, including non-profit owners, of small rental properties to reestablish affordable rental housing in areas that suffered the greatest losses. The subsidy funding, which may be used in conjunction with components of the State's Small Rental Assistance Program to repair, rehabilitate, reconstruct, or convert small rental properties, targets housing for low- and moderate-income families.

A major challenge in providing affordable rental units is the difference between what tenants can afford to pay and the projected cost of operating these units. A project-based rental assistance program provides funding to landlords who rent a specified number of affordable apartments to low-income families or individuals. Assistance is

tied directly to the properties, so tenants can generally not move without losing their assistance. The Department encourages the State to avoid PBRA if other financing is available or if the project can reasonably be structured to achieve and maintain its target affordability without the subsidy. Therefore, HUD recommends an up-front review reflecting the perceived financial costs of a project over the life of the subsidy. Additionally, HUD recommends that the State establish written requirements for income eligibility, maximum rents, utility allowances, structure quality, and affirmative marketing of projects throughout the life of the program.

HUD recommends that, in implementing PBRA funding, the State acquire and maintain the expertise equivalent to that of a tax credit administrator with responsibilities including, but not limited to, making PBRA payments to owner-investors and compliance control of eligibility determinations. Due to the distinctive and potentially high-risk nature of this eligibility waiver, the expertise must be maintained through the life of the program to ensure the prevention of fraud, abuse of funds, and duplication of benefits. Furthermore, HUD may conduct financial monitoring to oversee the State's efforts. HUD reminds the State of the regulatory requirement for annual financial audits of its programs, and of the requirements of **Federal Register** Notices 71 FR 7666 and 71 FR 63337 that its entire program be under the purview of an internal auditor.

Applicable Rules, Statutes, Waivers, and Alternative Requirements

1. *General note.* Except as described in this Notice, the statutory, regulatory, and notice provisions that shall apply to the use of these funds are:

a. Those governing the funds appropriated under Public Law 109–148 and Public Law 109–234 and already published in the **Federal Register**, including those in Notices 71 FR 7666, published February 13, 2006; 71 FR 34457, published June 14, 2006; 71 FR 63337, published October 30, 2006; and 72 FR 10020, published March 6, 2007.

b. Those governing the Community Development Block Grant program for states, including those at 42 U.S.C. 5301 *et seq.* and 24 CFR part 570.

2. *Waiver to permit some activities in support of the tourism industry.* 42 U.S.C. 5305(a) and 24 CFR 570.489(f) are waived to the extent necessary to make eligible use of no more than $5 million for assistance for the tourism industry, including promotion of a community or communities in general, provided the assisted activities are designed to support tourism to the most impacted and distressed areas, related to the effects of Hurricane Katrina. This waiver will expire 2 years after the date of this notice, after which previously ineligible support for the tourism industry, such as promotion of a community in general, will again be ineligible for CDBG funding.

3. *Waiver to permit project-based rental subsidies for affordable rental housing.* 42 U.S.C 5305(a) is waived to the extent necessary to make eligible the rental income subsidy assistance component of the Small Rental Assistance Program included in the state's HUD-approved Action Plan for Disaster Recovery, provided that the assisted activities are designed to ensure that CDBG funds will be invested only in proportion to the extent of anticipated need.

4. *Information collection approval note.* HUD has approval for information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) under OMB control number 2506–0165. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, nor is a person required to respond to, a collection of information, unless the collection displays a valid control number.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the disaster recovery grants under this Notice are as follows: 14.219; 14.228.

Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the FONSI must be scheduled by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number).

Dated: October 24, 2007.

Roy A. Bernardi,

Deputy Secretary.

[FR Doc. E7–21440 Filed 10–30–07; 8:45 am]

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Mobile acetylene trailers; use, operation, fabrication, etc.; comments due by 11-5-07; published 9-6-07 [FR 07-04355]

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Employee benefits; cafeteria plans; comments due by 11-5-07; published 8-6-07 [FR E7-14827]

Correction; comments due by 11-5-07; published 9-26-07 [FR Z7-14827]

TREASURY DEPARTMENT

Thrift Supervision Office

Prohibited consumer credit practices:

Unfair or deceptive acts or practices; comments due by 11-5-07; published 8-6-07 [FR E7-15179]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 3233/P.L. 110–107

To designate the facility of the United States Postal Service located at Highway 49 South in Piney Woods, Mississippi, as the "Laurence C. and Grace M. Jones Post Office Building". (Oct. 26, 2007; 121 Stat. 1023)

Last List October 26, 2007

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