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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. APHIS–2008–0003]

Brucellosis in Cattle; State and Area Classifications; Texas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Texas from Class A to Class Free. We have determined that Texas meets the standards for Class Free status. This action relieves certain restrictions on the interstate movement of cattle from Texas.

DATES: This interim rule is effective February 1, 2008. We will consider all comments that we receive on or before April 1, 2008.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0003* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2008–0003, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2008–0003.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. Debbi A. Donch, National Brucellosis Epidemiologist, Ruminant Health Programs Staff, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–5952.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease affecting animals and humans, caused by bacteria of the genus *Brucella*.

The brucellosis regulations, contained in 9 CFR part 78 (referred to below as the regulations), provide a system for classifying States or portions of States according to the rate of *Brucella* infection present and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or areas that do not meet the minimum standards for Class C are required to be placed under Federal quarantine.

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the 12 months preceding classification as Class Free. The Class C classification is for States or areas with the highest rate of brucellosis. Class A and Class B fall between these two extremes. Restrictions on moving cattle interstate become less stringent as a State approaches or achieves Class Free status.

The standards for the different classifications of States or areas entail (1) maintaining a cattle herd infection rate not to exceed a stated level during 12 consecutive months; (2) tracing back to the farm of origin and successfully closing a stated percentage of all brucellosis reactor cases found in the course of Market Cattle Identification (MCI) testing; (3) maintaining a surveillance system that includes testing of dairy herds, participation of all recognized slaughtering establishments in the MCI program, identification and monitoring of herds at high risk of infection (including herds adjacent to infected herds and herds from which infected animals have been sold or received), and having an individual herd plan in effect within a stated number of days after the herd owner is notified of the finding of brucellosis in a herd he or she owns; and (4) maintaining minimum procedural standards for administering the program.

Before the effective date of this interim rule, Texas was classified as a Class A State.

To attain and maintain Class Free status, a State or area must (1) remain free from field strain *Brucella abortus* infection for 12 consecutive months or longer; (2) trace back at least 90 percent of all brucellosis reactors found in the course of MCI testing to the farm of origin; (3) successfully close at least 95 percent of the MCI reactor cases traced to the farm of origin during the consecutive 12-month period immediately prior to the most recent anniversary of the date the State or area was classified Class Free; and (4) have a specified surveillance system, as described above, including an approved individual herd plan in effect within 15 days of locating the source herd or recipient herd.

The last brucellosis-infected cattle herd in Texas was detected in August 2005. The brucellosis reactors in the herd were depopulated. The remaining cattle in the herd were tested and found to be free of brucellosis; they were released from quarantine in September 2006. Since then, no brucellosis-affected herds have been detected.

After reviewing the brucellosis program records for Texas, we have concluded that this State meets the standards for Class Free status. Therefore, we are removing Texas from the list of Class A States in § 78.41(b) and adding it to the list of Class Free States in § 78.41(a). This action relieves certain restrictions on moving cattle interstate from Texas.

Immediate Action

Immediate action is warranted to remove unnecessary restrictions on the interstate movement of cattle from Texas. Under these circumstances, the

Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

Brucellosis is a contagious, costly disease of ruminants and other animals that can also affect humans. It is mainly a threat to cattle, bison, and swine. The disease causes decreased milk production, weight loss in animals, loss of young, infertility, and lameness. There is no known effective treatment.

The State of Texas has met all the requirements for obtaining Class Free status as outlined in the definition of ''Class Free State or area'' in § 78.1 of the regulations. The interim rule upgrades the brucellosis status of Texas from Class A to Class Free. Cattle and bison that are to be moved interstate from Class A States, except those moving directly to slaughter or to quarantined feedlots, must be tested before they are eligible for movement. Attaining Class Free status allows producers in Texas to forgo the cost of this test.

Brucellosis testing, including veterinary fees and handling expenses, costs about $7.50 to $15 per test. The expenses forgone as a result of this reclassification in status will be insignificant to cattle owners in Texas. There were 14 million cattle and calves in Texas in 2002. Of this total, 50.7 percent were breeding animals; the rest were composed of non-breeding animals in and outside feedlots. About 9.2 percent of cattle and calves in Texas are moved interstate.[1] The average per head value of cattle in Texas was $790 in 2006.[2] Thus, the cost of testing represents between 0.9 and 1.8 percent of the average value of the animals sold. The upgrading of the State to brucellosis Class Free status will result in a small savings for those entities moving cattle interstate other than directly to slaughter or to quarantined feeding.

We expect that the majority of cattle and calves operations that will be affected by the interim rule are small entities. Under guidelines established by the Small Business Administration (SBA), an enterprise producing cattle and calves is considered small if it has annual receipts of $750,000 or less.[3] There were 125,518 farms with sales of cattle and calves in Texas in 2002.[4] Over 99 percent of these farms had annual receipts not exceeding $750,000. These small farms had average sales of $17,700.

The interim rule will benefit producers that sell cattle and calves out of State for breeding and feeding purposes. However, the savings from the forgone testing will be very small, estimated to be between approximately 1 and 2 percent of the value of the animals sold.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, we are amending 9 CFR part 78 as follows:

PART 78—BRUCELLOSIS

■ 1. The authority citation for part 78 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

§ 78.41 [Amended]

■ 2. Section 78.41 is amended as follows:

■ a. In paragraph (a), by adding the word ''Texas,'' after the word ''Tennessee,''.

■ b. In paragraph (b), by removing the word ''Texas'' and adding the word ''None'' in its place.

Done in Washington, DC, this 28th day of January 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–1853 Filed 1–31–08; 8:45 am]

BILLING CODE 3410–34–P

[1] Dennis A. Shields and Kenneth H. Mathews, Jr., Interstate Livestock Movements, U.S. Department of Agriculture (USDA)/Economic Research Service, June 2003.

[2] USDA/National Agricultural Statistics Service (NASS), Meat Animals Production, Disposition, and Income 2006 Summary, April 2007.

[3] SBA, Table of Small Business Size Standards, effective October 1, 2007.

[4] USDA/NASS, 2002 Census of Agriculture.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0101; Directorate Identifier 2007–SW–76–AD; Amendment 39–15357; AD 2007–26–51]

RIN 2120–AA64

Airworthiness Directives; Eurocopter Deutschland GmbH Model EC135 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 2007–26–51, which was sent previously to all known U.S. owners and operators of Eurocopter Deutschland GmbH (Eurocopter) Model EC135 helicopters by individual letters. This AD requires, within 5 hours time-in-service (TIS), inspecting the tail rotor control rod (control rod) and adjoining ball pivot and replacing any unairworthy parts before further flight. This amendment is prompted by a report of a fatal accident involving the failure of a control rod. The actions specified by this AD are intended to prevent failure of a control rod and subsequent loss of control of the helicopter.

DATES: Effective February 19, 2008, to all persons except those persons to whom it was made immediately effective by Emergency AD 2007–26–51, issued on December 14, 2007, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before April 1, 2008.

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

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

You may get the service information identified in this AD from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527.

Examining the Docket: You may examine the docket that contains the AD, any comments, and other information on the Internet at *http://www.regulations.gov*, or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located in Room W12–140 on the ground floor of the West Building at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Chinh Vuong, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Safety Management Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5116, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: On December 14, 2007, the FAA issued Emergency AD 2007–26–51 for Eurocopter Model EC135 helicopters, which requires, within 5 hours TIS, inspecting the control rod and adjoining ball pivot and replacing any unairworthy parts before further flight. That action was prompted by a report of a fatal accident involving the failure of a control rod. This condition, if not corrected, could result in the failure of a control rod and subsequent loss of control of the helicopter.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, notified us that an unsafe condition may exist on Eurocopter EC135 and EC635 helicopters. EASA advises that an accident recently occurred with an EC135 helicopter in Japan. Preliminary investigation results indicate that the helicopter loss of control was due to the failure of the control rod.

Eurocopter has issued Alert Service Bulletin No. EC135–67A–017, dated December 13, 2007 (ASB), which specifies procedures for checking the attachment hardware on the control rod for a tight fit, checking the ball pivot for damage and freedom of movement, and replacing any damaged part before the next flight. EASA classified this ASB as mandatory and issued EASA AD No. 2007–0301–E, dated December 13, 2007, to ensure the continued airworthiness of these helicopters in the Federal Republic of Germany.

These helicopter models are manufactured in the Federal Republic of Germany and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, EASA has kept the FAA informed of the situation. The FAA has examined the findings of EASA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described is likely to exist or develop on other Eurocopter Model EC135 helicopters of the same type design, the FAA issued Emergency AD 2007–26–51 to prevent failure of a control rod and subsequent loss of control of the helicopter. The AD requires, within 5 hours TIS, inspecting the control rod and adjoining ball pivot and replacing any unairworthy parts before further flight. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore, within 5 hours TIS, inspecting the control rod and adjoining ball pivot and replacing any unairworthy parts before further flight are required, and this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on December 14, 2007, to all known U.S. owners and operators of Eurocopter Model EC135 helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to 14 CFR 39.13 to make it effective to all persons.

The FAA estimates that this AD will affect 163 helicopters of U.S. registry. We estimate 1 work hour to inspect the control rod and ball pivot and 3 work hours to replace a control rod or ball pivot, if necessary, at an average labor rate of $80 per work hour. Required parts will cost $400 for the control rod and $675 for the ball pivot, per helicopter. Based on these figures, we estimate the total cost impact of the AD on U.S. operators to be $32,765, assuming 15 helicopters require a control rod and ball pivot to be replaced.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2008–0101; Directorate Identifier 2007–SW–76–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of our docket web site, you can find and read the comments to any of our dockets, including the name of the individual who sent the comment. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://www.regulations.gov* for the Federal government privacy notice.

Regulatory Findings

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

responsibilities among the various levels of government.

For the reasons discussed above, I certify that the 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 an economic evaluation of the estimated costs to comply with this AD. See the AD docket to examine the economic evaluation.

Authority for This Rulemaking

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2007–26–51 Eurocopter Deutschland GmbH: Amendment 39–15357. Docket No. FAA–2008–0101; Directorate Identifier 2007–SW–76–AD.

Applicability

Model EC135 helicopters, serial number (S/N) 0005 up to and including S/N 0444, except S/N 0028, and with tail rotor control rod (control rod), part number L672M2005207, installed, certificated in any category.

Compliance

Required as indicated, unless accomplished previously.

To prevent the failure of a control rod and subsequent loss of control of the helicopter, do the following:

(a) Within 5 hours time-in-service (TIS), inspect the control rod, shown in item 7, Figure 1, of this AD, with the parts identified in parenthesis as follows:

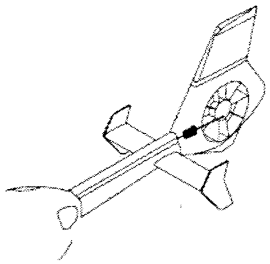
(1) Pull the control rod (7) until it reaches its stop position. Inspect attachment hardware of control rod (7) for a tight fit. Manually inspect for possible relative motion between control rod (7) and yaw actuator (8).

(2) Inspect the locking plate (9) for a tight fit.

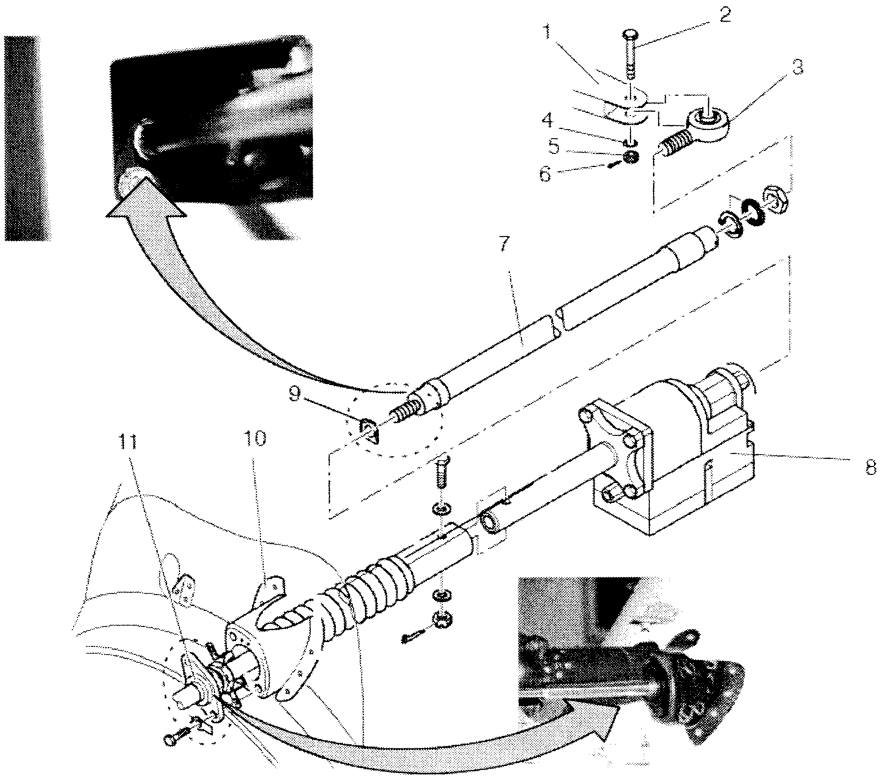
(3) Visually inspect the attachment hardware between control rod (7) and yaw actuator (8) for play or thread exposure. If play or thread exposure is found, before further flight, replace the control rod with an airworthy control rod.

(b) Inspect the ball pivot as shown in item 11, Figure 1, of this AD by removing the tail rotor drive shaft fairing and inspecting for a loose bearing or play. If a loose bearing or play is found, before further flight, replace the ball pivot with an airworthy ball pivot.

BILLING CODE 4910–13–P



1	Input lever of Fenestron actuator	
2	Close–tolerance bolt	L635M1021201
3	Rod end bearing	CN6ME-RK
4	Washer	EN2139-06010
5	Nut	MBBN3129-06D
6	Cotter pin	EN2367-10018
7	Control rod	L672M2005207
8	Yaw actuator	418-00847-000
9	Locking plate	LN9022-10
10	Bracket	
11	Ball pivot	



Ball Pivot and Control Rod
Figure 1

BILLING CODE 4910–13–C

Note 1: Eurocopter Alert Service Bulletin No. EC135–67A–017, dated December 13, 2007, pertains to the subject of this AD.

(c) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Safety Management Group, FAA, ATTN: Chinh Vuong, Rotorcraft Directorate, Fort Worth, Texas 76193–0111, telephone (817) 222–5116, fax (817) 222–5961, for information about previously approved alternative methods of compliance.

Note 2: The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2007–0301–E, dated December 13, 2007.

(d) This amendment becomes effective on February 19, 2008, to all persons except those persons to whom it was made immediately effective by Emergency AD No. 2007–26–51, issued December 14, 2007, which contained the requirements of this amendment.

Issued in Fort Worth, Texas, on January 23, 2008.

Scott A. Horn,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E8–1702 Filed 1–31–08; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 202, 230, 240, 260, and 270

[Release Nos. 33–8885, 34–57218, 39–2452, IC–28137]

Amendment of Procedures for Payment of Fees

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is amending its procedures for payment of fees imposed under the federal securities laws to update the procedures and reflect the designation of U.S. Bank, N.A. (''U.S. Bank'') as the

Commission's U.S. Treasury Department (''Treasury'') designated lockbox depository.

DATES: *Effective Date:* February 1, 2008.

FOR FURTHER INFORMATION CONTACT: Kenneth Johnson, (202) 551–4306, Chief Management Analyst, Office of the Executive Director; Stephen Jung, (202) 551–5162, Assistant General Counsel, Office of the General Counsel; Michael Bloise, (202) 551–5116, Senior Counsel, Office of the General Counsel, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is amending rule 3a [17 CFR 202.3a] of its Informal and Other Procedures, rule 111 [17 CFR 230.111] under the Securities Act of 1933 (''Securities Act''),[1] rule 0–9 [17 CFR 240.0–9] under the Securities Exchange Act of 1934 (''Exchange Act''),[2] rule 7a–10 [17 CFR 260.7a–10] under the Trust Indenture Act of 1939 (''Trust Indenture Act''),[3] and rule 0–8 [17 CFR 270.0–8] under the Investment Company Act of 1940 (''Investment Company Act'').[4]

I. Discussion

The federal securities laws impose a number of fees.[5] Many of these fees currently are transmitted to a Treasury designated lockbox depository. Mellon Bank, N.A. (''Mellon'') currently serves as this lockbox depository. As of February 4, 2008, the responsibility for providing lockbox depository services to Treasury will switch from Mellon to U.S. Bank. Mellon is referenced in payment instructions appearing in rule 3a [17 CFR 202.3a] of the Commission's Informal and Other Procedures and rule 111 [17 CFR 230.111] under the Securities Act. The Commission is amending these rules to reflect the change in depository institutions.

The Commission also is amending rule 111 [17 CFR 230.111] under the Securities Act, rule 0–9 [17 CFR 240.0–9] under the Exchange Act, and rule 0–8 [17 CFR 270.0–8] under the Investment Company Act to clarify that payment of fees pursuant to these rules may be made by wire transfer, as well as by certified check, bank cashier's check, United States postal money order, or bank money order, and to eliminate the option of making payment by cash or personal check.

In addition, the Commission is amending rule 3a [17 CFR 202.3a] of its Informal and Other Procedures, which governs the payment of filing fees under the Securities Act, Exchange Act, and Investment Company Act. The revised rule updates the instructions for payment of filing fees to the Treasury designated lockbox depository, as discussed above. It also eliminates outdated procedures for the payment of filing fees, such as payment by hand delivery, payment by mail directly to the Commission's headquarters in Washington, DC, the use of Form ID to update a filer's address, and the distinction between ''restricted'' and ''unrestricted'' fees. In addition, the revised rule incorporates the special instructions for payment of filing fees for rule 462(b) and rule 110(d) filings previously included in rule 111 [17 CFR 230.111] under the Securities Act.

An explanatory note also is added to rule 3a [17 CFR 202.3a] with respect to filing fee accounts. A filing fee account is maintained for each filer who submits a filing requiring a fee on the Commission's EDGAR system or who submits funds to the Treasury designated lockbox depository in anticipation of paying a filing fee. The note explains that, under current law, the deposit of money into a filing fee account does not constitute payment of a filing fee. Payment of the filing fee occurs at the time the filing is made, commensurate with the drawing down of the balance of the filing fee account.

Finally, the Commission is removing references in its regulations to the payment of fees under the Trust Indenture Act, since fees that were imposed under that Act were repealed by the Investor and Capital Markets Fee Relief Act.[6]

II. Administrative Procedure Act and Other Administrative Laws

The Commission has determined that these amendments to its rules relate solely to the agency's organization, procedure, or practice. Therefore, the provisions of the Administrative Procedure Act (''APA'') regarding notice of proposed rulemaking and opportunity for public participation are not applicable.[7] The APA also requires publication of a rule at least 30 days before its effective date unless the agency finds otherwise for good cause.[8] Since the Commission's Treasury designated lockbox depository will change on February 4, 2008, we find that immediate effectiveness of these amendments will clarify the obligations of payors and prevent the confusion that might otherwise occur if the Commission's rules are not amended contemporaneously. Consequently, we find there is good cause for the amendments to take effect immediately upon publication in the **Federal Register**. For the same reasons, and because these amendments do not substantially affect the rights or obligations of non-agency parties, the provisions of the Small Business Regulatory Enforcement Fairness Act are not applicable.[9] In addition, the provisions of the Regulatory Flexibility Act, which apply only when notice and comment are required by the APA or other law, are not applicable.[10] Finally, these amendments do not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995, as amended.[11]

III. Cost-Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules. The rule amendments the Commission is adopting today amend the Commission's rules to reflect a change of the Commission's Treasury designated lockbox depository and to update the procedures for payment of fees required under the securities laws. The Commission does not believe that the rule amendments will impose any costs on non-agency parties, or that if there are any such costs, they are negligible.

IV. Consideration of Burden on Competition

Section 23(a)(2) of the Exchange Act requires the Commission, in making rules pursuant to any provision of the Exchange Act, to consider among other matters the impact any such rule would have on competition. Section 2(c) of the Investment Company Act requires the Commission to give the same consideration in making rules under the Investment Company Act. The Commission does not believe that the amendments that the Commission is adopting today will have any impact on competition.

V. Statutory Basis

The Commission is adopting amendments pursuant to sections 6(b) and 19 of the Securities Act, sections 13(e), 14(g), 23, and 31 of the Exchange Act, section 319 of the Trust Indenture Act, and sections 24(f) and 38 of the Investment Company Act.

[1] 15 U.S.C. 77a.

[2] 15 U.S.C. 78a.

[3] 15 U.S.C. 77aaa.

[4] 15 U.S.C. 80a.

[5] *See, e.g.*, section 6(b) of the Securities Act, sections 13(e), 14(g), and 31 of the Securities Exchange Act and section 24(f) of the Investment Company Act.

[6] Pub. L. No. 107–123; 115 Stat. 2930 (2002).

[7] 5 U.S.C. 553(b).

[8] 5 U.S.C. 553(d)(3).

[9] 5 U.S.C. 804.

[10] 5 U.S.C. 601–12.

[11] 44 U.S.C. 3501–20.

VI. Text of Final Amendments

List of Subjects

17 CFR Part 202

Administrative practice and procedure, Securities.

17 CFR Part 230

Reporting and recordkeeping requirements, Securities.

17 CFR Part 240

Brokers, Reporting and recordkeeping requirements, Securities.

17 CFR Part 260

Reporting and recordkeeping requirements, Securities, Trusts and Trustees.

17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

■ In accordance with the foregoing, 17 CFR, Chapter II of the Code of Federal Regulations is amended as follows:

PART 202—INFORMAL AND OTHER PROCEDURES

■ 1. The authority citation for part 202 continues to read in part as follows:

Authority: 15 U.S.C. 77s, 77t, 78d–1, 78u, 78w, 78*ll*(d), 79r, 79t, 77sss, 77uuu, 80a–37, 80a–41, 80b–9, 80b–11, 7202 and 7211 *et seq.*, unless otherwise noted.

* * * * *

■ 2. Section 202.3a is revised to read as follows:

§ 202.3a Instructions for filing fees.

(a) *General instructions for remittance of filing fees.* Payment of filing fees specified by the following sections shall be made according to the directions listed in this section: § 230.111 of this chapter, § 240.0–9 of this chapter, and § 270.0–8 of this chapter. All such fees are to be paid through the U.S. Treasury designated lockbox depository and may be paid by wire transfer, certified check, bank cashier's check, United States postal money order, or bank money order pursuant to the specific instructions set forth in paragraph (b) of this section. Personal checks will not be accepted for payment of fees. To ensure proper posting, all filers must include their Commission-assigned Central Index Key (CIK) number (also known as the Commission-assigned registrant or payor account number) on fee payments. If a third party submits a fee payment, the fee payment must specify the account number to which the fee is to be applied.

(b) *Instructions for payment of filing fees.* Except as provided in paragraph (c) of this section, these instructions provide direction for remitting fees specified in paragraph (a) of this section. You may contact the Fee Account Services Branch in the Office of Financial Management at (202) 551–8989 for additional information if you have questions.

(1) *Instructions for payment of fees by wire transfer (FEDWIRE).* U.S. Bank, N.A. in St. Louis, Missouri is the U.S. Treasury designated lockbox depository and financial agent for Commission filing fee payments. The hours of operation at U.S. Bank are 8:30 a.m. to 6 p.m. Eastern time for wire transfers. Any bank or wire transfer service may initiate wire transfers of filing fee payments through the FEDWIRE system to U.S. Bank. A filing entity does not need to establish an account at U.S. Bank in order to remit filing fee payments.

(i) To ensure proper credit and prompt filing acceptance, in all wire transfers of filing fees to the Commission, you must include:

(A) The Commission's account number at U.S. Bank (152307768324); and

(B) The payor's CIK number.

(ii) You may refer to the examples found on the Commission's Web site at *http://www.sec.gov* for the proper format.

(2) *Instructions for payment of fees by check or money order.* To remit a filing fee payment by check (certified or bank cashier's check) or money order (United States postal or bank money order), you must make it payable to the Securities and Exchange Commission, omitting the name or title of any official of the Commission. On the front of the check or money order, you must include the Commission's account number (152307768324) and CIK number of the account to which the fee is to be applied. U.S. Bank does not accept walk-in deliveries by individuals. You must mail checks or money orders to the following U.S. Bank addresses:

(i) Remittances through the U.S. Postal Service must be sent to the following address:Securities and Exchange Commission, P.O. Box 979081, St. Louis, MO 63197–9000.

(ii) The following address can be used for remittances through other common carriers:U.S. Bank, Government Lockbox 979081, 1005 Convention Plaza, SL–MO–C2–GL, St. Louis, MO 63101.

Note to paragraph (b). Wire transfers are not instantaneous. The time required to process a wire transfer through the FEDWIRE system, from origination to receipt by U.S. Bank, varies substantially. Specified filings, such as registration statements pursuant to section 6(b) of the Securities Act of 1933 that provide for the registration of securities and mandate the receipt of the appropriate fee payment upon filing, and transactional filings pursuant to the Securities Exchange Act of 1934, such as many proxy statements involving extraordinary business transactions, will not be accepted if sufficient funds have not been received by the Commission at the time of filing. You should obtain from your bank or wire transfer service the reference number of the wire transfer. Having this number can greatly facilitate tracing the funds if any problems occur. If a wire transfer of filing fees does not contain the required information in the proper format, the Commission may not be able to identify the payor and the acceptance of filings may be delayed. To ensure proper credit, you must provide all required information to the sending bank or wire transfer service. Commission data must be inserted in the proper fields. The most critical data are the Commission's account number at U.S. Bank and the Commission-assigned account number identified as the CIK number.

(c) *Special instructions for §§ 230.462(b) and 230.110(d) of this chapter.* Notwithstanding paragraphs (a) and (b) of this section, for registration statements filed pursuant to §§ 230.462(b) and § 230.110(d) of this chapter, payment of filing fees for the purposes of this section may be made by:

(1) The registrant or its agent instructing its bank or a wire transfer service to transmit to the Commission the applicable filing fee by a wire transfer of such amount from the issuer's account or its agent's account to the U.S. Treasury designated lockbox depository as soon as practicable, but no later than the close of the next business day following the filing of the registration statement; and

(2) The registrant submitting with the registration statement at the time of filing a certification that:

(i) The registrant or its agent has so instructed its bank or a wire transfer service;

(ii) The registrant or its agent will not revoke such instructions; and

(iii) The registrant or its agent has sufficient funds in such account to cover the amount of such filing fee.

Note to paragraph (c). Such instructions may be sent on the date of filing the registration statement after the close of business of such bank or wire transfer service, provided that the registrant undertakes in the certification sent to the Commission with the registration statement that it will confirm receipt of such instructions by the bank or wire transfer service during regular business hours on the following business day.

(d) *Filing fee accounts.* A filing fee account is maintained for each filer who submits a filing requiring a fee on the

Commission's EDGAR system or who submits funds to the U.S. Treasury designated depository in anticipation of paying a filing fee. Account statements are regularly prepared and provided to account holders. Account holders must maintain a current account address with the Commission to ensure timely access to these statements.

Note to paragraph (d). The deposit of money into a filing fee account does not constitute payment of a filing fee. Payment of the filing fee occurs at the time the filing is made, commensurate with the drawing down of the balance of the fee account.

(e) *Return of funds from inactive accounts.* Funds held in any filing fee account in which there has not been a deposit, withdrawal or other adjustment for more than 180 calendar days will be returned to the account holder, and account statements will not be sent again until a deposit, withdrawal or other adjustment is made with respect to the account. Filers must maintain a current account address to assure the timely return of funds. It may not be possible to return funds from inactive accounts if the Commission is unable to identify a current account address of an account holder after making reasonable efforts to do so.

Note to paragraph (e). A company must update its account and other addresses using the EDGAR Web site. This method ensures data integrity and the timeliest update. Simply changing an address in the text of the cover page of a filing made on the EDGAR system will not be sufficient to update the Commission's account address records.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

■ 3. The authority citation for part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l*, 78m, 78n, 78o, 78t, 78w, 78*ll*(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

■ 4. Section 230.111 is revised to read as follows:

§ 230.111 Payment of fees.

All payments of fees for registration statements under the Act shall be made by wire transfer, or by certified check, bank cashier's check, United States postal money order, or bank money order payable to the Securities and Exchange Commission, omitting the name or title of any official of the Commission. There will be no refunds. Payment of fees required by this section shall be made in accordance with the directions set forth in § 202.3a of this chapter.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 5. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 6. Section. 240.0–9 is revised to read as follows:

§ 240.0–9 Payment of fees.

All payment of fees shall be made by wire transfer, or by certified check, bank cashier's check, United States postal money order, or bank money order payable to the Securities and Exchange Commission, omitting the name or title of any official of the Commission. Payment of filing fees required by this section shall be made in accordance with the directions set forth in § 202.3a of this chapter.

PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

■ 7. The authority citation for part 260 continues to read as follows:

Authority: 15 U.S.C. 77eee, 77ggg, 77nnn, 77sss, 78*ll*(d), 80b–3, 80b–4, and 80b–11.

§ 260.7a–10 [Removed]

■ 8. Section 260.7a–10 is removed.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

■ 9. The authority citation for part 270 continues to read in part as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, and 80a–39, unless otherwise noted.

* * * * *

■ 10. Section 270.0–8 is revised to read as follows:

§ 270.0–8 Payment of fees.

All payment of fees shall be made by wire transfer, or by certified check, bank cashier's check, United States postal money order, or bank money order payable to the Securities and Exchange Commission, omitting the name or title of any official of the Commission. Payment of fees required by this section shall be made in accordance with the directions set forth in § 202.3a of this chapter.

By the Commission.

Dated: January 29, 2008.

Nancy M. Morris,

Secretary.

[FR Doc. E8–1839 Filed 1–31–08; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 347

[Docket Nos. 1978N–0021 and 1978N–0021P] (formerly Docket Nos. 78N–0021 and 78N–0021P)

RIN 0910–AF42

Skin Protectant Drug Products for Over-the-Counter Human Use; Reduced Labeling; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulation that establishes conditions under which over-the-counter (OTC) skin protectant drug products are generally recognized as safe and effective (GRASE) and not misbranded. This amendment revises labeling requirements for OTC skin protectant drug products formulated and marketed as lip protectants.

DATES: This rule is effective March 3, 2008.

FOR FURTHER INFORMATION CONTACT: Michael L. Koenig, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Silver Spring, MD 20993, 301–796–2090.

SUPPLEMENTARY INFORMATION:

I. Why Are We Publishing This Document?

This document addresses submissions that FDA received in response to a June 4, 2003, final rule for OTC skin protectant drug products (68 FR 33362). The final rule establishes reduced labeling requirements for the following products (68 FR 33362 at 33374):

- products formulated and labeled as lip protectants that meet the criteria established in § 201.66(d)(10) (21 CFR 201.66(d)(10)) (§ 347.50(e));
- products containing only cocoa butter, petrolatum, or white petrolatum

identified in § 347.10(d), (m), and (r), used singly or in combination with each other, and marketed other than as a lip protectant (§ 347.50(f));

- sunscreen drug products labeled for use only on specific small areas of the face (e.g., lips, nose, ears, and around the eyes) and that meet the criteria established in § 201.66(d)(10) (§ 352.52(f)); and
- products containing combinations of skin protectant and sunscreen active ingredients (§ 352.60(b)(2), (c), and (d)).

Because we had not previously proposed this reduced labeling, we requested comments specifically on these new labeling requirements. This document addresses the five issues presented in the three sets of comments that we received after the final rule. All of the comments request changes to existing regulatory requirements. As explained in section II of this document, we agree to make the changes requested in two of the comments and are, therefore, amending the final rule to:

- add an alternative statement of identity for skin protectant products formulated and marketed as lip protectants and
- allow omission of a warning for lip protectant products that meet the criteria established in § 201.66(d)(10).

As also explained in section II of this document, we do not agree to make the other three changes requested in the submissions.

II. What Are Our Conclusions on the Submissions?

(Comment 1) A drug manufacturer requested that we include the term ''lip protectant'' as an alternative statement of identity for skin protectants marketed as lip protectants (Ref. 1). The manufacturer notes that we have distinctly identified products formulated and marketed as lip protectants in other areas of the skin protectant final rule, including §§ 347.3 and 347.50(b)(2)(ii), (e), and (f). The manufacturer further points out that we have permitted a product used to treat poison ivy, oak, and sumac to be distinctly identified as a ''poison ivy, oak, sumac protectant'' in § 347.50(a)(3).

We agree with the manufacturer and are including the term ''lip protectant'' as an alternative statement of identity for skin protectant drug products formulated and marketed as lip protectants. We agree that the term ''lip protectant'' accurately describes this category of products and is readily understood by consumers. Accordingly, we are adding the following new paragraph in § 347.50(a): *For any product formulated as a lip protectant.* ''Skin protectant,'' ''lip protectant,'' or ''lip balm'' (optional, may add dosage form, e.g., ''cream,'' ''gel,'' ''lotion,'' or ''ointment'').

(Comment 2) A drug manufacturer requested that we allow reduced labeling for all lip protectant products, whether or not they meet the criteria established in § 201.66(d)(10) (i.e., whether or not they are sold in small packages) (Ref. 1). The manufacturer states that the skin protectant final rule (68 FR 33362 at 33380 to 33381) amends the final rule for OTC sunscreen drug products to allow reduced labeling ''without the need to meet the criteria established in § 201.66(d)(10)'' for the following products:

- Sunscreen products that are marketed as lip protectants or lipsticks (§ 352.52(c)(2) and (d)(4)) and
- Combination sunscreen-skin protectant drug products marketed as lip protectants or lipsticks (§ 352.60(c) and (d)).

Because the skin protectant monograph (§ 347.50(e)) allows reduced labeling only for lip protectants that meet the criteria in § 201.66(d)(10), the manufacturer argues that the skin protectant and sunscreen monographs are inconsistent.

We have determined that the reduced labeling requirements established under § 347.50(e) for OTC lip protectant products are appropriate only if the criteria of § 201.66(d)(10) are met. If the criteria of § 201.66(d)(10) are not met, at least one of the factors upon which we relied to conclude that minimal information is needed for safe and effective use of lip protectants would not apply, namely, the product would not necessarily be sold in small packages (see 68 FR 33362 at 33371). Further, if the § 201.66(d)(10) criteria are not met, space constraints would not exist to support reduced labeling. We believe the current labeling requirements for lip protectant products that do not satisfy the § 201.66(d)(10) criteria benefit consumers and should continue to apply.

Therefore, we are not revising the criteria for reduced labeling in the skin protectant monograph. We will address, in a separate rulemaking for the sunscreen monograph, whether sunscreen lip protectant products (i.e., sunscreen products marketed as lip protectants or combination sunscreen-skin protectant drug products marketed as lip protectants or lipsticks) should also be required to satisfy the conditions of § 201.66(d)(10) in order to qualify for reduced labeling requirements. We intend to publish a sunscreen rulemaking in a future issue of the **Federal Register**. The rulemaking will address various labeling and testing requirements for both ultraviolet A (UVA) and ultraviolet B (UVB) rays, including reduced labeling requirements for sunscreen lip protectant products.

(Comment 3) A drug manufacturer argued that the warning statement exemption allowed for sunscreens combined with skin protectants (§ 352.60(c)) should be extended to all lip protectant products (Ref. 1). Section 352.60(c) of the sunscreen monograph permits sunscreen-skin protectant combinations to omit the warning in § 347.50(c)(3): ''Stop use and ask a doctor if [bullet] condition worsens [bullet] symptoms last more than 7 days or clear up and occur again within a few days.'' The manufacturer points out that the skin protectant monograph does not allow this warning to be omitted for skin protectants formulated and labeled as lip protectants. Section 347.50(e)(1)(iii) of the skin protectant monograph allows the warning to be shortened (i.e., ''Stop use and ask a doctor if condition lasts more than 7 days'') but not omitted. The manufacturer argues that the requirement for this warning makes the skin protectant and sunscreen monographs inconsistent.

We agree with the manufacturer and are changing the skin protectant monograph to allow the warning to be omitted for lip protectant products that meet the requirements in § 201.66(d)(10). In the preamble to the skin protectant final rule, we concluded that minimal information is needed for safe and effective use of lip protectant products because of specific characteristics of these products (68 FR 33362 at 33371), including that they:

- are typically packaged in small amounts,
- are applied to limited areas of the body,
- have high therapeutic index,
- are extremely low risk in consumer use situations,
- provide a favorable public health benefit,
- require no specified dosage limitation, and
- require few specific warnings and no general warnings.

Because minimal information is needed for their safe and effective use, we agree that lip protectant products meeting the criteria in § 201.66(d)(10) can be exempted from the 7-day warning requirement otherwise applicable to skin protectants under § 347.50(c)(3). We believe consumers can safely and effectively use these products without this warning. Accordingly, we are revising § 347.50(e)(1)(iii) in the skin protectant monograph to read: ''The

'external use only' warning in § 347.50(c)(1) and in § 201.66(c)(5)(i) of this chapter may be omitted. The warnings in § 347.50(c)(2), (c)(3), and (c)(4) are not required.'' This revision will make the skin protectant and sunscreen monographs consistent in this regard, as requested by the manufacturer.

(Comment 4) A law firm requested that we allow additional reduced labeling for lip protectants and all other skin protectant drug products by eliminating the requirement to list the established name of an active ingredient both on the principal display panel (PDP) and in the Drug Facts box (Ref. 2). The law firm argues that the PDP for skin protectants and, in fact, most OTC drug products should only include the general pharmacological category as the statement of identity.

The issue raised by the law firm is outside the scope of the reduced labeling issues for which we sought comments in the skin protectant final rule. We do not believe it appropriate to address this issue in this document because the issue impacts the labeling for all OTC drug products. The law firm, or any other party interested in amending the OTC labeling regulations, can submit a citizen petition in accordance with 21 CFR 10.30.

(Comment 5) A drug manufacturers' association requested that we consider a greater degree of flexibility in the reduced labeling allowed for skin protectant (lip protectant) and skin protectant-sunscreen combination products (Ref. 3). Specifically, the association asks that we permit manufacturers to list inactive ingredients somewhere other than on the container label for ''products such as lip balms and lip balms with sunscreen,'' which are sold in very small containers similar to lipsticks containing sunscreens. The association notes that we permit this labeling exception for some cosmetic products.

We are denying the request to list inactive ingredients somewhere other than on the container label for skin protectant and skin protectant-sunscreen combination drug products. We do allow listing of inactive ingredients for some cosmetic products in labeling accompanying the product rather than on the container label (21 CFR 701.3(i)). However, we do not allow inactive ingredients to be listed somewhere other than on the container label if the cosmetic product is also a drug product (e.g., a lipstick containing sunscreen).

Section 502(e)(1)(A)(iii) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352(e)(1)(A)(iii)) requires that the inactive ingredients of a drug be listed on the outside of the retail package and, if determined to be appropriate by FDA, on the immediate container. Under § 201.66, the regulation implementing section 502(e)(1)(A)(iii) for OTC drugs, inactive ingredients must be listed on the outside container of a retail package or on the immediate container of the product if there is no outside container or wrapper. The association asserts that section 502(e)(1)(B) of the act (21 U.S.C. 352(e)(1)(B)) gives us the ''authority to grant relief from the inactive ingredient listing requirements in appropriate circumstances.'' However, section 502(e)(1)(B) addresses only prescription drug labeling. We do not find a basis for allowing an option to list the inactive ingredients of an OTC drug product in a different location, such as in other labeling accompanying the product.

III. Analysis of Economic Impacts

We have examined the impacts of this final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). We believe that this final rule is not a significant regulatory action under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. This rule provides an additional statement of identity for OTC skin protectant drug products. The revision provides manufacturers of OTC lip protectant drug products the option to label their products as a ''lip protectant'' or ''lip balm'' in addition to ''skin protectant,'' as required by the monograph. The rule also allows manufacturers to omit a warning if the packaging meets the requirements of § 201.66(d)(10). Thus, this rule does not impose any new requirements. Rather, manufacturers may make these changes if they wish to do so. If manufacturers choose to make the changes, they may do so when ordering new labeling in the normal course of business. Therefore, we do not believe that this final rule will have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $127 million, using the most current (2006) Implicit Price Deflator for the Gross Domestic Product. We do not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

IV. Paperwork Reduction Act of 1995

We conclude that the labeling requirements in this document are not subject to review by the Office of Management and Budget because they do not constitute a ''collection of information'' under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Rather, the labeling statements are a ''public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public'' (5 CFR 1320.3(c)(2)).

V. Federalism

We have analyzed this final rule in accordance with the principles set forth in Executive Order 13132. We have determined that this final rule has a preemptive effect on State law. Section 4(a) of the Executive order requires agencies to ''construe * * * a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.'' Section 751 of the act (21 U.S.C. 379r) is an express preemption provision. Section 751(a) of the act (21 U.S.C. 379r(a)) provides that ''* * * no State or political subdivision of a State may establish or continue in effect any requirement—(1) that relates to the regulation of a drug that is not subject to the requirements of section 503(b)(1) or 503(f)(1)(A); and (2) that is different from or in addition to, or that is otherwise not identical with, a requirement under this Act, the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471 *et seq.*), or the Fair Packaging and Labeling Act (15 U.S.C. 1451 *et seq.*).'' Currently, this provision operates to preempt States from

imposing requirements related to the regulation of nonprescription drug products. Section 751(b) through (e) of the act outlines the scope of the express preemption provision, the exemption procedures, and the exceptions to the provision.

This final rule provides an additional statement of identity for skin protectants formulated and marketed as lip protectants and allows omission of a warning for certain lip protectant products. Any final rule has a preemptive effect in that it precludes States from issuing requirements related to the labeling of OTC skin protectant drug products that are different from or in addition to, or not otherwise identical with a requirement in the final rule. This preemptive effect is consistent with what Congress set forth in section 751 of the act. Section 751(a) of the act displaces both State legislative requirements and State common law duties. We also note that even where the express preemption provision is not applicable, implied preemption may arise (see *Geier* v. *American Honda Co.*, 529 US 861 (2000)).

We believe that the preemptive effect of the final rule is consistent with Executive Order 13132. Section 4(e) of the Executive order provides that ''when an agency proposes to act through adjudication or rulemaking to preempt State law, the agency shall provide all affected State and local officials notice and an opportunity for appropriate participation in the proceedings.''

We provided the States with an opportunity for appropriate participation in this rulemaking when we sought input from all stakeholders on the reduced labeling requirements that this rulemaking addresses, through publication of the request for comments in the **Federal Register** in the preamble to the final rule on June 4, 2003 (68 FR 33362). We received no comments from any States in response to the request.

In addition, on December 10, 2007, FDA's Division of Federal and State Relations provided notice via e-mail transmission to elected officials of State governments and their representatives of national organization. The notice provided the States with further opportunity to comment. It advised the States of the publication of the request for comments and encouraged State and local governments to review the request and to provide any comments to the dockets for this rulemaking (Docket Nos. 1978N–0021 and 1978N–0021P) by a date 30 days after the date of the notice (i.e., by January 10, 2008), or to contact certain named individuals. FDA received no comments in response to this notice. The notice has been filed in the previously mentioned dockets.

In conclusion, we believe that we have complied with all of the applicable requirements under the Executive order and have determined that the preemptive effects of this rule are consistent with Executive Order 13132.

VI. Environmental Impact

We have determined under 21 CFR 25.31(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. References

The following references are on display in the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852 under Docket No. 1978N–0021 and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Comment No. C67.
2. Comment No. C68.
3. Comment No. C69.

List of Subjects in 21 CFR Part 347

Labeling, Over-the-counter drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 347 is amended as follows:

PART 347—SKIN PROTECTANT DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

■ 1. The authority citation for 21 CFR part 347 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

■ 2. Section 347.50 is amended by revising paragraphs (a) and (e)(1)(iii) to read as follows:

§ 347.50 Labeling of skin protectant drug products.

* * * * *

(a) *Statement of identity*. The labeling of the product contains the established name of the drug, if any, and identifies the product with one or more of the following:

(1) *For any product*. ''Skin protectant'' (optional, may add dosage form, e.g., ''cream,'' ''gel,'' ''lotion,'' or ''ointment'').

(2) *For any product formulated as a lip protectant*. ''Skin protectant,'' ''lip protectant,'' or ''lip balm'' (optional, may add dosage form, e.g., ''cream,'' ''gel,'' ''lotion,'' or ''ointment'').

(3) *For products containing any ingredient in § 347.10(b), (c), (j), (s), (t), and (u)*. ''Poison ivy, oak, sumac drying'' (optional, may add dosage form, e.g., ''cream,'' ''gel,'' ''lotion,'' or ''ointment'').

(4) *For products containing any ingredient in § 347.10(b), (c), (f), (j), (o), (s), (t), and (u)*. ''Poison ivy, oak, sumac protectant.''

* * * * *

(e) *Products formulated and labeled as a lip protectant and that meet the criteria established in § 201.66(d)(10) of this chapter*. * * *

(1) * * *

(iii) The ''external use only'' warning in § 347.50(c)(1) and in § 201.66(c)(5)(i) of this chapter may be omitted. The warnings in § 347.50(c)(2), (c)(3), and (c)(4) are not required.

* * * * *

Dated: January 28, 2008.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E8–1818 Filed 1–31–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Tulathromycin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pfizer, Inc. The supplemental NADA provides for veterinarian prescription use of tulathromycin injectable solution for the treatment of infectious bovine keratoconjunctivitis and the addition of a pathogen to the indication for use for treatment of swine respiratory disease.

DATES: This rule is effective February 1, 2008.

FOR FURTHER INFORMATION CONTACT: Joan C. Gotthardt, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8342, e-mail: *joan.gotthardt@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017, filed a supplement to NADA 141–244 for DRAXXIN (tulathromycin)

Injectable Solution. The supplemental NADA provides for treatment of infectious bovine keratoconjunctivitis associated with *Moraxella bovis* and the addition of a pathogen, *Mycoplasma hyopneumoniae*, to the indication for use for treatment of swine respiratory disease. The application is approved as of December 28, 2007, and the regulations are amended in 21 CFR 522.2630 to reflect the approval.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this supplemental approval qualifies for 3 years of marketing exclusivity beginning on the date of approval.

The agency has determined under 21 CFR 25.33(a)(1) and (d)(5) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. In § 522.2630, revise paragraphs (d)(1)(ii) and (d)(2)(ii) to read as follows:

§ 522.2630 Tulathromycin.

* * * * *

(d) * * *

(1) * * *

(ii) *Indications for use*. For the treatment of bovine respiratory disease (BRD) associated with *Mannheimia haemolytica*, *Pasteurella multocida*, and *Histophilus somni* (*Haemophilus somnus*), and *Mycoplasma bovis*; for the control of respiratory disease in cattle at high risk of developing BRD associated with *M. haemolytica*, *P. multocida*, *H. somni*, and *M. bovis*; and for the treatment of infectious bovine keratoconjunctivitis (IBK) associated with *Moraxella bovis*.

* * * * *

(2) * * *

(ii) *Indications for use*. For the treatment of swine respiratory disease (SRD) associated with *Actinobacillus pleuropneumoniae, Pasteurella multocida, Bordetella bronchiseptica, Haemophilus parasuis*, and *Mycoplasma hyopneumoniae*.

* * * * *

Dated: January 24, 2008.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. E8–1906 Filed 1–31–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs For Use in Animal Feed; Zilpaterol

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Intervet, Inc. The NADA provides for use of zilpaterol, monensin, and tylosin in three-way combination Type B and Type C medicated feeds for cattle fed in confinement for slaughter.

DATES: This rule is effective February 1, 2008.

FOR FURTHER INFORMATION CONTACT: Gerald L. Rushin, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8103, e-mail: *gerald.rushin@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION: Intervet, Inc., P.O. Box 318, 29160 Intervet Lane, Millsboro, DE 19966, filed NADA 141–276 that provides for use of ZILMAX (zilpaterol hydrochloride), and RUMENSIN (monensin), and TYLAN (tylosin phosphate) Type A medicated articles to make dry and liquid three-way combination Type B and Type C medicated feeds used for increased rate of weight gain, improved feed efficiency, and increased carcass leanness; for prevention and control of coccidiosis due to *Eimeria bovis* and *E. zuernii*; and for reduction of incidence of liver abscesses caused by *Fusobacterium necrophorum* and *Arcanobacterium (Actinomyces) pyogenes* in cattle fed in confinement for slaughter during the last 20 to 40 days on feed. The NADA is approved as of January 10, 2008, and the regulations in 21 CFR 558.355, 558.625, and 558.665 are amended to reflect the approval.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

■ 2. In § 558.355, add paragraph (f)(7)(iv) to read as follows:

§ 558.355 Monensin.

* * * * *

(f) * * *

(7) * * *

(iv) Zilpaterol alone or in combination as in § 558.665.

■ 3. In § 558.625, add paragraph (f)(2)(ix) to read as follows:

§ 558.625 Tylosin.

* * * * *

(f) * * *

(2) * * *

(ix) Zilpaterol alone or in combination as in § 558.665.

■ 4. In § 558.665, revise paragraph (e) to read as follows:

§ 558.665 Zilpaterol.

* * * * *

(e) *Conditions of use in cattle.* It is administered in feed as follows:

Zilpaterol in grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsor
(1) 6.8 to provide 60 to 90 mg/head/day		Cattle fed in confinement for slaughter: For increased rate of weight gain, improved feed efficiency, and increased carcass leanness in cattle fed in confinement for slaughter during the last 20 to 40 days on feed.	Feed continuously as the sole ration during the last 20 to 40 days on feed. Withdrawal period: 3 days.	057926
(2) [Reserved]				
(3) [Reserved]				
(4) 6.8 to provide 60 to 90 mg/head/day	Monensin 10 to 40, plus tylosin 8 to 10	Cattle fed in confinement for slaughter: As in paragraph (e)(1) of this section; for prevention and control of coccidiosis due to *Eimeria bovis* and *E. zuernii*; and for reduction of incidence of liver abscesses caused by *Fusobacterium necrophorum* and *Arcanobacterium (Actinomyces) pyogenes*.	As in paragraph (e)(1) of this section; see §§ 558.355(d) and 558.625(c) of this chapter. Monensin and tylosin as provided by No. 000986 in § 510.600(c) of this chapter.	057926

Dated: January 24, 2008.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. E8–1903 Filed 1–31–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Parts 502, 522, 559 and 573

RIN 3141–AA23

Facility License Standards

AGENCY: National Indian Gaming Commission (''NIGC'' or ''Commission'').

ACTION: Final rule.

SUMMARY: The rule adds new sections and a new part to the Commission's regulations that require tribes to adopt and enforce standards for facility licenses. These standards will help the Commission ensure that each place, facility or location where class II or class III gaming will occur is located on Indian lands eligible for gaming as required by the Indian Gaming Regulatory Act. The rules will ensure that gaming facilities are constructed, maintained and operated in a manner that adequately protects the environment and the public health and safety.

DATES: Effective March 3, 2008.

FOR FURTHER INFORMATION CONTACT: Penny J. Coleman, Acting General Counsel, at 202–632–7003; fax 202–632–7066 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

On October 17, 1988, Congress enacted the Indian Gaming Regulatory Act (''IGRA'' or ''Act''), 25 U.S.C. 2701–21, creating the National Indian Gaming Commission (''NIGC'' or ''Commission'') and developing a comprehensive framework for the regulation of gaming on Indian lands. 25 U.S.C. 2702. The NIGC was granted, among other things, the authority to promulgate such regulations and guidelines as it deems appropriate to implement the provisions of IGRA, 25 U.S.C. 2706(b)(10), as well as oversight and enforcement authority, including the authority to monitor tribal compliance with the Act, Commission regulations, and tribal gaming ordinances.

First, the IGRA allows gaming on Indian lands pursuant to 25 U.S.C. 2703(4), and it contains a general prohibition against gaming on lands acquired into trust by the United States for the benefit of the tribe after the Act's effective date of October 17, 1988, unless one of several exceptions are met. 25 U.S.C. 2719. The Commission has jurisdiction only over gaming operations on Indian lands and therefore must establish that it has jurisdiction as a prerequisite to its monitoring, enforcement, and oversight duties. 25 U.S.C. 2702(3).

Second, the NIGC needs to obtain information on a tribe's environmental and public health and safety laws to oversee the implementation of approved tribal gaming ordinances. Before opening a gaming operation, a tribe must adopt an ordinance governing gaming activities on its Indian lands. 25 U.S.C. 2710. The Act specifies a number of mandatory provisions to be contained in each tribal gaming ordinance and subjects such ordinances to the NIGC Chairman's approval. *Id.* Approval by the Chairman is predicated on the inclusion of each of the Act's specified mandatory provisions in the tribal gaming ordinance. *Id.* Among these is a requirement that the ordinance must contain a provision ensuring that ''the construction and maintenance of the gaming operation, and the operation of that gaming is conducted in a manner that adequately protects the environment and the public health and safety.'' 25 U.S.C. 2710(b)(2)(E). Since 1993, when the Commission became operational, the Chairman has required each tribal gaming ordinance submitted for approval to include the express environmental and public health and safety statement set out in 25 U.S.C. 2710(b)(2)(E).

The Commission believes that tribes must have some form of basic laws in the following environmental and public health and safety areas: (1) Emergency preparedness, including but not limited

to fire suppression, law enforcement and security; (2) food and potable water; (3) construction and maintenance; (4) hazardous materials; and (5) sanitation (both solid waste and wastewater). Accordingly, in 2002, the Commission issued an interpretive rule to ensure the adequate protection of the environment, public health, and safety. 67 FR 46109, Jul. 12, 2002 (''Interpretive Rule'').

The NIGC has conducted many environment and public health and safety inspections since the issuance of the Interpretive Rule and has worked with a consultant to allow the agency to gain expertise in this area. Through this inspection process, the NIGC has identified weaknesses in tribal laws or enforcement thereof and has worked with tribes to cure deficiencies. The Commission has also identified several deficiencies in the Interpretative Rule that will be corrected by the Facility License Standards. Namely, the Interpretive Rule does not assist the Commission in identifying what environmental and public health and safety laws apply to each gaming operation nor does it ensure that tribal gaming regulatory authorities are enforcing those laws.

There is a need for a submission to the Commission of a certification by the tribe that it has enacted or identified laws applicable to its gaming operation and is in compliance with them together with a document listing those laws. This process will enable tribes and the Commission to identify problem areas where laws are needed so that the NIGC may offer technical advice and encourage adoption and enforcement of appropriate laws. The final Facility License Standards will not replace the Interpretive Rule but will work in conjunction with it. The final rule does not preclude the Chairman's authority to take an enforcement action in the event imminent jeopardy exists at a tribal gaming facility.

Regulatory Matters

Regulatory Flexibility Act

The rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Moreover, Indian tribes are not considered to be small entities for the purposes of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

The rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rule does not have an annual effect on the economy of $100 million or more. The rules will not cause a major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies or geographic regions and does not have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

The Commission, as an independent regulatory agency within the Department of the Interior, is exempt from compliance with the Unfunded Mandates Reform Act, 2 U.S.C. 1502(1); 2 U.S.C. 658(1). Regardless, the rule does not impose an unfunded mandate on state, local, or tribal governments or on the private sector of more than $100 million per year. Thus, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Takings

In accordance with Executive Order 12630, the Commission has determined that the rule does not have significant takings implications. A takings implication assessment is not required.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of General Counsel has determined that the rule does not unduly burden the judicial system and meet the requirements of sections 3(a) and 3(b)(2) of the Order.

National Environmental Policy Act

The Commission has determined that the rule does not constitute a major federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321, *et seq.*

Paperwork Reduction Act

The following final Facility Licensing Standards require information collection under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*, and are subject to review by the Office of Management and Budget.

General Comments to Final Facility License Standards

We requested written comments from the public on the proposed Facility License Standards (72 FR 59044) during the comment period that opened on October 18, 2007, and closed on December 3, 2007. During that comment period we received 81 comments: 70 from tribal governments or tribal gaming commissions; 3 from citizens' associations; 3 from gaming associations and 1 each from a governor's association, a county, a private citizen, a state environmental agency, and a cardroom. Many of the comments were grouped based on the common topics addressed. The Commission carefully reviewed all comments and where appropriate revised the final rule to reflect those comments. The comments and the NIGC response follow.

Comments Questioning NIGC Authority To Promulgate the Facility License Standards Under IGRA

Many of the comments to the proposed Facility License Standards pertained to the Commission's authority. We address the specific issues and Commission response below.

Comments Regarding NIGC Authority

Several commenters stated that the proposed rule improperly intrudes upon tribal sovereignty in the absence of a clearly expressed intent by Congress to do so and seeks to replace the tribe's sovereign regulatory authority with NIGC's authority. Stated variously, the proposed rule would compel the tribes to adopt NIGC's facility licensing standards instead of the tribes' own, or it would compel the tribes to enact positive law and then grant the NIGC the right to judge the adequacy of that law.

The Commission disagrees with these characterizations of IGRA and of the proposed rule's purpose and consequence. The Commission recognizes that tribes are the primary regulators of Indian gaming and has no intention or desire to intrude upon that vital role or to usurp tribal authority. Thus, in the general case, the rule only asks each tribe to identify and enforce the laws it has adopted to ensure the health and safety of the public and the environment, i.e., the laws or standards it has adopted in the areas of emergency preparedness, food and potable water, construction and maintenance, etc. There is no requirement that a tribe adopt and enforce any particular law. The Commission merely wishes to know, for example, whether a tribe has written its own fire code, whether it has adopted a county's code, or whether a tribal-state compact provides for the application of a particular fire code.

It is only in the unusual case where a tribe has adopted no, or obviously inadequate, health and safety standards that the rule would insist that the tribe adopt laws. That, however, places no obligation on the tribe that does not already exist. IGRA obligates each tribe, through its gaming ordinance, to ensure

that the construction, maintenance, and operation of each tribal gaming facility is conducted in a manner that adequately protects the environment and the public health and safety. 25 U.S.C. 2710(b)(1)(E). In short, the rule encroaches no further on tribal sovereignty than IGRA already has.

Likewise, the Commission already ''judges'' the adequacy of tribal health and safety standards. The Commission already has, and already exercises, oversight responsibility for health and safety at tribal gaming operations. As with all aspects of regulating Indian gaming, the primary responsibility belongs to the tribes, and the Commission plays only an oversight role under the Commission's existing interpretive rule, 67 FR 46109. The adoption of the rule would make no change to this arrangement.

Several commenters stated that the NIGC has no authority to require adoption of specific health and safety or operational standards because IGRA contains no such standards.

Although IGRA does not enumerate specific health and safety requirements for gaming facilities, the Act requires that the construction, maintenance and operation of a gaming facility ''is conducted in a manner which adequately protects the environment and the public health and safety.'' 25 U.S.C. 2710(b)(1)(E). Congress created the NIGC, 25 U.S.C. 2704(a), and gave it the specific authority to ''promulgate such regulations and guidelines as it deems appropriate to implement the provisions of [IGRA].'' 25 U.S.C. 2706(b)(10). The Commission is doing so here. This rule mandates that tribes identify, and certify their enforcement of, the health and safety laws, resolutions, codes, policies, standards and/or procedures that apply to their gaming operations. Therefore, the rule implements the requirements of 25 U.S.C. 2710(b)(1)(E). Further, when certain terms are used herein to describe applicable health and safety requirements, such as laws, resolutions, codes, policies, standards and/or procedures, the use of such term or terms is not meant to exclude all other terms of similar meaning.

Several commenters stated that NIGC has no authority to attach specific requirements, such as a three-year renewal period, to issuing a facility license because IGRA contains no such requirements. Other commenters suggested that the three-year renewal period was arbitrary.

The Commission agrees that IGRA does not specify any period of renewal or other conditions to the obligation to issue a facility license. The Commission disagrees, however, with the commenters' conclusion that the Commission therefore lacks the authority to promulgate such requirements. The Commission also disagrees that the three-year renewal period is arbitrary, as it is a reasonable period to periodically review changes in tribal requirements and/or changes in physical circumstances at a gaming facility.

IGRA obligates each tribe to license its gaming facilities: ''A separate license issued by the Indian tribe shall be required for each place, facility or location on Indian lands at which Class II gaming is conducted.'' 25 U.S.C. 2710(b)(1). IGRA also obligates each tribe, through its gaming ordinance, to ensure that the construction, maintenance, and operation of each tribal gaming facility is conducted in a manner that adequately protects the environment and the public health and safety. 25 U.S.C. 2710(b)(1)(E). What exactly is required by each of these sections, or when it is required, however, Congress did not say. Congress has neither the institutional expertise nor the inclination to specify all regulatory details in this or any other organic statute for any regulatory agency. Accordingly, it creates regulatory agencies and gives to them the responsibility to fill in those gaps.

Congress created the NIGC, 25 U.S.C. 2704(a), and gave it the specific authority to ''promulgate such regulations and guidelines as it deems appropriate to implement the provisions of this chapter [i.e., IGRA].'' 25 U.S.C. 2706(b)(10). The Commission has deemed it appropriate to implement the specific provisions set out in 25 U.S.C. 2710(b)(1) and 2710(b)(1)(E).

The rule does not require that each facility be licensed only every three years. Rather, the rule requires that a facility be licensed no less frequently than once every three years, proposed 25 CFR 559.3, and the Commission observes that most tribes license their gaming facilities more frequently. The choice of a three-year renewal period is therefore consistent with, and largely encompasses, the tribes' existing practices. The rule also requires that the tribe submit a list of applicable health and safety laws and certify its compliance with them. Proposed 25 CFR 559.5. The Commission has deemed it appropriate to implement the specific provisions in 25 U.S.C. 2710(b)(1) and 2710(b)(1)(E).

By seeking to have tribes periodically license gaming facilities and identify the health and safety rules they enforce, the rule creates mechanisms by which the tribes and the Commission can ensure that gaming facilities are licensed and that their construction, maintenance and operation is ''conducted in a manner which adequately protects the environment and the public health and safety.'' 25 U.S.C. 2710(b)(1)(E).

Several commenters stated that NIGC has no authority to require submissions of facility licenses, a list of all applicable health and safety laws and standards, or any documents other than those specifically identified in IGRA such as: (1) Annual audit reports; (2) proposed gaming ordinances; (3) notice of the issuance of a gaming license to key employees and primary management officials; and (4) an application for self-regulation.

The Commission agrees that IGRA does not specifically identify the submissions required by the proposed rule. The Commission disagrees that the comment contains an exhaustive list of documents whose submission IGRA specifically requires. The comment omits, for example, the submission of management contracts for the Chairman's review and approval. 25 U.S.C. 2711. The Commission also disagrees with the commenters' conclusion that the ability to require submission of information is limited to those specific submissions identified in IGRA.

As to the submission of the facility license itself and the information about health and safety laws and compliance that must accompany it, IGRA, again, obligates each tribe to license its gaming facilities. 25 U.S.C. 2710(b)(1). IGRA also obligates each tribe, through its gaming ordinance, to ensure that the construction, maintenance, and operation of each tribal gaming facility is conducted in a manner that adequately protects the environment and the public health and safety. 25 U.S.C. 2710(b)(1)(E). What exactly is required by each of these sections, however, Congress did not say. Congress has neither the institutional expertise nor the inclination to specify all regulatory details in this or any other organic statute for any regulatory agency. Accordingly, it creates regulatory agencies and gives to them the responsibility to fill in those gaps.

Congress created the NIGC, 25 U.S.C. 2704(a), and gave it the specific authority to ''promulgate such regulations and guidelines as it deems appropriate to implement the provisions of this chapter [i.e., IGRA].'' 25 U.S.C. 2706(b)(10). The Commission has deemed it appropriate to implement the specific provisions set out in 25 U.S.C. 2710(b)(1) and 2710(b)(1)(E).

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health and safety rules they enforce, the rule creates mechanisms by which the tribes and the Commission can ensure that gaming facilities are licensed and that their construction, maintenance and operation is ''conducted in a manner which adequately protects the environment and the public health and safety.'' 25 U.S.C. 2710(b)(1)(E).

That said, there is a second, sufficient source of authority within IGRA for the submission of facility licenses to the Commission. A facility license is a requirement of IGRA, 25 U.S.C. 2710(b)(1), and the failure to issue a license is a violation of IGRA against which the NIGC Chairman may bring an enforcement action. 25 U.S.C. 2713. The Chairman, therefore, has the authority to request any facility license for any facility as part of a routine investigation. 25 U.S.C. 2706(b). Rather than regularly making such a demand through the Commission's enforcement staff, the proposed rule simply establishes an administrative process for the submission of facility licenses upon their issuance.

Similarly, as to the submission of Indian lands information, IGRA requires that all gaming take place on ''Indian lands.'' *See, e.g.*, 25 U.S.C. 2710(b)(1), 2710(d)(1). Gaming that does not take place on Indian lands is subject to all state and local gambling laws and federal laws apart from IGRA. The Chairman therefore has the authority to request Indian lands information for any facility as part of a routine investigation in order to establish whether gaming is, in fact, occurring under IGRA. 25 U.S.C. 2706(b). Rather than regularly making such a demand through the Commission's enforcement staff, the proposed rule simply establishes an administrative process for the submission of minimal Indian lands information before the opening of a new facility.

A few commenters stated that requiring tribes to submit site-specific facility licenses to the NIGC for approval presumes the NIGC is mandated by IGRA to engage in site-specific Indian lands determinations, but the Commission has no role in determining Indian lands. In previous litigation, the Commission has argued that it does not have a statutory duty to make pre-construction Indian lands determinations.

The Commission disagrees with the characterization of the proposed rule and with the commenters' assertion that the Commission has no role in determining Indian lands.

The rule does not establish any mechanism or system whereby facility licenses are submitted to the Commission for approval. Rather, the rule simply requires that 120 days prior to the opening of a new facility, the tribe submit a notice that a facility license is under consideration to make the Commission aware of the impending opening. The rule also requires the submission of minimal information for determining Indian lands. Again, the location of a gaming facility on Indian lands is a necessary prerequisite to gaming under IGRA. The proposed rule requests some of the information necessary to make an Indian lands determination and was a change from a previous draft of the rule, which imposed an affirmative obligation on each tribe to make an Indian lands determination before opening a new facility.

One commenter stated that the NIGC does not have the authority to make Indian lands determinations because IGRA plainly gives that authority to the Secretary of the Interior.

The Commission disagrees. IGRA gives the ability to make Indian lands determinations both to the Secretary, for example, while taking land into trust, and to the Commission. Again, the location of a gaming facility on Indian lands is a necessary prerequisite to gaming under IGRA and to the Commission's jurisdiction under IGRA. A reading of IGRA under which the Commission is unable to determine its own jurisdiction would undermine, if not make meaningless, the Chairman's enforcement authority under 25 U.S.C. 2713.

A number of commenters stated that under the decisions in *Colorado River Indian Tribes* v. *NIGC,* the Commission does not have the authority to regulate class III gaming and that these regulations are an unauthorized rulemaking intended to encroach on class III gaming.

The Commission respects and abides by the courts' decisions in the *Colorado River Indian Tribes* v. *National Indian Gaming Commission* (''CRIT'') cases. The Commission disagrees, however, that the CRIT cases stand for the broad proposition that the NIGC lacks any authority over class III gaming. Rather, CRIT stands for the narrower propositions that (1) an administrative agency has only the authority Congress delegated to it and (2) that Congress did not grant the Commission authority to promulgate minimum internal control standards for class III gaming. The latter is not applicable here and the Commission, as stated at length above, believes that it does have the authority to promulgate these facility license standards.

A few commenters stated that the NIGC may not issue these regulations because under the well-established canons of construction in federal Indian law, statutory ambiguities must be resolved in favor of the tribes.

The Commission agrees that the Indian canon of construction holds that statutory ambiguities are to be resolved in favor of the tribes. The Commission disagrees, however, that the canon prohibits the Commission from adopting the rule. The Commission believes that the rule effectuates some of IGRA's statutory requirements: the licensing of gaming facilities and the construction, maintenance and operation of those facilities so as to protect the environment and the public health and safety. Doing these things ensures not only the health of casino employees and patrons but the health of the Indian gaming industry itself.

Assuming for the sake of argument that there are ambiguities in IGRA, the Commission believes that the rule resolves them in favor of the tribes. The commenters would have otherwise. In such a situation where there are competing views of what is ''in favor of the tribes,'' the canon will not bar the Commission's decision. *See, e.g., Shakopee Mdewakanton Sioux Community* v. *Hope*, 16 F.3d 261, 264 n.6 (8th Cir. 1994).

A few commenters stated that there is no authority to demand that a tribe perform information gathering for the Commission without a contract or compensation. Section 2710(b)(7) of IGRA plainly requires that if the Commission desires a tribal government to perform commission functions, then the Commission should contract to pay them.

The Commission disagrees with this reading of 25 U.S.C. 2710(b)(7). Nothing in this section requires the Commission to contract with tribes for compliance with Commission regulations. Rather, this section permits and recommends to the Commission that it contract with the tribes for enforcement of Commission regulations.

Comments Regarding the Licensing Requirements of the Facility License Standards

Some commenters stated that the requirements of the proposed rule are unnecessary because they duplicate existing Federal and tribal regulations.

The Commission disagrees. The rule does not require the adoption of any particular health and safety rules or standards and thus cannot conflict with standards the tribe has adopted on its own that apply under a tribal-state compact, or that apply under federal

law. Even in a case where the proposed rule would mandate the adoption of a health and safety law—because none had been adopted, for example—no particular law is mandated.

As for the submission of ''Indian lands'' information, the rule does not require the submission of information already in the possession of the Bureau of Indian Affairs and thus avoids unnecessary duplication.

Some commenters stated that the NIGC has not demonstrated that the current system of licensing facilities is inadequate.

The Commission believes that the rule fills two important regulatory needs. First, it allows the Commission to have advance notice of the opening of gaming facilities, and thus to have the ability to exercise its oversight regulatory authority appropriately and timely. Second, it helps ensure that adequate health and safety standards are maintained and complied with at all gaming facilities.

One commenter sought clarification whether the tribal gaming regulatory authority is the entity that is responsible for implementing the rule, which only uses the word ''tribe''.

The rule mirrors the language used in IGRA when it places regulatory responsibility on a ''tribe.'' Nothing, however, prohibits a tribe from vesting a tribal gaming regulatory authority with the responsibility to act in compliance with the proposed rule.

A number of commenters recommended that the NIGC require tribal governments to certify the implementation of their public health and safety ordinances as part of the annual audit process.

The Commission disagrees. The rule is designed to be minimally intrusive. It requires licensing of facilities no less frequently than once every three years. Making certification of enforcement of health and safety ordinances part of each tribe's annual audit process would make three times the work and is more likely to be inconsistent with current licensing practices.

One commenter requested that facility license submission be required not only for new facilities but also for substantial expansions of existing facilities (substantial being defined as either a 25% increase in the number of class II/III machines or an increase of more than 150 machines).

The Commission disagrees. This would be inconsistent with the purpose underlying notification to the Commission of new facilities. The notification allows the Commission to exercise its oversight regulatory responsibility for the new facility appropriately and timely. There is no such need for notification with existing facilities because the Commission has regular contact with, and is generally aware of the circumstances of, gaming facilities already in operation.

One commenter believed that a copy of the tribe's facility license submission should be sent to the governing boards of the county and any city immediately adjacent to or surrounding the facility as well as to the Governor of the state and allow those entities to provide comment. One commenter proposed that notice be provided to state Governors of tribal submissions concerning the opening and closing of gaming facilities.

The Commission disagrees. Indian gaming is an expression of the sovereign right of Indian tribes to regulate their own affairs on their own land, separate and apart from the laws and requirements of the states or their political subdivisions. To the extent Congress wished the involvement of the states in Indian gaming, IGRA so provides, and the Commission does not believe it to be appropriate to add more. As facility licensing is a matter of gaming regulation, notification to the states may be provided for by tribal-state compact.

One commenter requested that the rule distinguish between class II and class III in each subsection and that tribes be required to submit tribal-state compacts as part of their submission as evidence of compliance of state law as it relates to new facilities.

The Commission disagrees. The requirements of the rule are applicable regardless of the class of gaming involved, and thus no distinction is necessary. Further, if a tribal-state compact provides for the application of particular health and safety laws, then identification of the compact and its requirements is sufficient.

One commenter stated that it is unclear whether state or local governments or other entities could challenge tribes' facility license notice and, thus, Indian lands determinations.

The Commission does not intend to permit such a challenge.

One commenter believed that the license submission should also state whether the land is trust land eligible for Indian gaming under IGRA and the basis for that assertion.

The Commission disagrees. The submission of Indian lands information is required only for new facilities. If a tribe is opening a facility on land newly taken into trust, then the Department of the Interior will have made an Indian lands determination as part of the trust acquisition process. Requiring the information suggested here would be duplicative.

Comments Regarding the Environment, Public Health and Safety

Several commenters suggested that adopting the Facility License Standards would conflict with the Interpretative Rule previously issued by the NIGC that lays out a ''limited and discrete responsibility'' for the Commission in regulating the environment and public health and safety.

The Commission agrees with the commenters that the Environment, Public Health and Safety Interpretative Rule (67 FR 46109) envisions a limited and discrete responsibility. The Interpretative Rule also highlighted, however, that this did not leave the Commission without authority or responsibility in this area as ''IGRA explicitly accords the Commission a role in ensuring compliance with the environment, public health and safety provision of IGRA.'' The Facility License Standards do not increase the NIGC's limited role. They do not demand adoption of any particular health and safety rules; rather, the rule primarily requires tribes to make the NIGC aware of what health and safety rules apply. This compliments NIGC's oversight role under 67 FR 46109.

Several commenters noted that the requirements of the Facility License Standards are already addressed in some tribal-state compacts and that those tribes should be exempted from the reporting requirements in this rule.

For those tribes whose tribal-state compacts identify those laws, resolutions, codes, policies or standards, other than federal laws that are required in the NIGC's Facility License Standards, they can submit to the NIGC the location where that information can be found in their tribal-state compact. It should be noted, however, that tribal-state compacts are only required for class III gaming and the Facility License Standards apply to both class II and class III gaming facilities.

Several comments related to the ability of the NIGC to carry out its duties under the Facility License Standards without creating a new bureaucracy within the Commission.

The Commission disagrees. The NIGC already has existing personnel who conduct site visits to tribal gaming facilities under the Interpretative Rule and who handle environmental issues. Existing personnel will continue to work on these and other environmental issues that arise.

Several comments related to the NIGC's statement that it had conducted many site visits and inspections since

issuance of the Interpretative Rule which led to the NIGC identifying the deficiencies addressed by this rule. Commenters requested that the NIGC detail the results of those inspections to justify the necessity of the Facility License Standards.

The NIGC has identified the following health and safety issues during site visits: lack of fire suppression systems; lack of fire or ambulance service; insanitary food storage and handling; and, storage of hazardous materials in locations with non-compatible chemicals. In its Facility License Standards, the Commission seeks to carry out its obligations under IGRA to ensure that gaming is occurring in a manner that adequately protects the environment and the public health and safety.

Several commenters were unclear as to what the NIGC's remedy would be for non-compliance with the Facility License Standards.

The Chairman has the power to order temporary closure of a gaming facility for substantial violation of the provisions of 25 U.S.C. 2713.

One commenter requested that the Facility License Standards be expanded to provide for independent audits by qualified, certified environmental/engineering firms, according to a schedule established by the tribe and agreed upon by the Commission, with local governmental entities allowed to review the results of the audit.

The Commission determined that adding this requirement to the Facility License Standards would be unnecessary as the NIGC's site visits and the material requested to be submitted with the Facility License Standard would be sufficient for the NIGC to determine compliance with IGRA.

Comments Regarding the Lands Information Required Under the Facility License Standards

Several comments stated that the information required for a new gaming facility is onerous, duplicative and overly-burdensome.

The Commission disagrees. In this final rule, the NIGC has significantly reduced the lands information tribes are required to submit with a new facility license. In the initial working drafts of the proposed rule, the NIGC required the lands information on both new and existing gaming facilities. In this final rule, the NIGC is only requiring qualifying land information for a facility license on new facilities. In addition, the final rule only requires the facility name, legal description, and BIA tract number for a new facility. Prior drafts required a great deal more: A legal analysis, copies of trust documents, copies of court decisions, executive orders, secretarial proclamations or other documentation regarding land ownership. The information required in the final rule represents the basic information necessary so that the NIGC can then determine whether additional lands documentation is required.

One commenter expressed concern that the NIGC will respond directly to inquiries from other governmental offices and Congress while public and state governments will be subject to the Freedom of Information Act, 5 U.S.C. 552.

The Commission complies with the Freedom of Information Act (''FOIA''), therefore, any requests for information submitted as part of the Facility License Standards requirements will be subject to FOIA and the Privacy Act of 1974, 5 U.S.C. 552a. With the exception of law enforcement agencies and requests from Congressional committees, which are exempt from FOIA, the NIGC treats all requests for information obtained as subject to FOIA. This includes requests from Congressional offices, state and federal offices, and the general public.

Comments Regarding the Information Collection Burden

One commenter suggested that the estimates provided by the NIGC regarding the amount required for information collection are far too low in the event a tribe does not have laws already in place in one or more of the areas identified as required by the Facility License Standards.

The Commission's estimate of approximately $5,000 to $10,000 is for those tribes who do not currently have laws in one of the areas enumerated in § 559.5 of the rule. The Commission feels this estimate is reasonable for a tribe who must hire an attorney to assist in identification of those laws, codes, or standards that apply to its gaming facility. The Commission recognizes that there may be underlying expenses related to instituting an environmental, public health and safety program in the event a tribe identifies a deficiency in a certain area while complying with the Facility License Standards; however, the costs associated with these efforts would vary greatly depending on the size and location of the gaming facility and on the level of environmental, public health and safety standards already in place.

One commenter suggested that the environment, public health and safety requirements in the Facility License Standards be tied to applicable federal laws (i.e., Clean Water Act, Safe Drinking Water Act, Resource Conservation and Recovery Act, etc.).

The Commission disagrees. The purpose of the rule is to identify environment, public health and safety laws that apply that are not Federal laws.

Comment Regarding Paperwork Reduction Act

The commenter requested that ''burden'' be struck through this section and replaced with ''resources required for'' and that ''annual information burden'' be replaced with ''resources required to collect the information annually.''

This language, however, is based on the language in the Paperwork Reduction Act and is not the NIGC's language.

Comments Regarding the Regulatory Flexibility Act

The Commission received a comment that contrary to the statement in the proposed rule that Indian tribes are not considered to be small entities for purposes of the Regulatory Flexibility Act, it may be that tribes are small entities for this purpose. The Commission disagrees. Indian tribes are not included in this definition. 5 U.S.C. 601(5)(c).

Comments Regarding NIGC Consultation in Connection With This Rule

Several comments pertained to the level of consultation conducted in connection with the Facility License Standards stating that the NIGC did not conduct meaningful consultation and that the consultation conducted was in violation of the NIGC's consultation policy.

The NIGC published its Government-to-Government Tribal Consultation Policy on March 24, 2004, 69 FR 16973. In that policy the Commission recognized the government-to-government relationship that exists between the NIGC and federally-recognized tribes and stated that the primary focus on the NIGC's consultation policies would involve consulting with individual tribes and their recognized governmental leaders. The Commission's consultation policy also calls for providing early notification to effected tribes of any regulatory policies prior to a final agency decision regarding their formulation or implementation.

In keeping with its consultation policy, the NIGC sent its first working draft of the Facility License Standards to tribal leaders on May 12, 2006. That notice was also published on the NIGC

Web site, *http://www.nigc.gov*, for public comment. The Commission also invited 309 tribes to meet with it in consultation on this rule and other gaming matters. Following notification of this first working draft, the NIGC received 56 written comments and held over 53 government-to-government consultation meetings with tribal leaders.

Following written and oral comments from tribal leaders, the draft Facility License Standards were revised and sent to tribal leaders for comment on March 21, 2007, with comments due on May 15, 2007. The comment period was subsequently extended another 15 days to May 30, 2007. Again the Commission invited tribal leaders to provide comments and to meet with the Commission during tribal consultations. The Commission received 78 written comments and held over 60 separate consultation meetings to discuss this draft of the Facility License Standards and other gaming matters.

The Facility License Standards were again revised based on input from tribal leaders and the public. The Commission published the proposed Facility License Standards on October 18, 2007, after holding more than 113 meetings with tribal leaders and careful consideration of the 134 comments received on the two prior drafts.

In keeping with its consultation policy, the NIGC involved tribes early in the process of considering the Facility License Standards and tribes had the opportunity to provide written comments and to meet with the Commission over a lengthy period. The Commission carefully reviewed the comments received on the proposed rule and took those comments into consideration prior to making a final determination on the final Facility License Standards.

Several commenters stated that the NIGC's consultation process for this regulation fell short of prior agency consultations where tribal representatives were active participants not only in providing advice and input to the NIGC, but also in the drafting process itself.

While the NIGC has chosen to utilize various rulemaking formats when formulating several Commission regulations, including tribal advisory committees, the NIGC consultation policy provides that the NIGC will utilize that form of rulemaking to the extent it deems practicable and appropriate. It is within the Commission's discretion to determine the appropriate form of rulemaking for each regulation. The Commission determined that for purposes of such a narrow and limited rule such as the Facility License Standards, sharing early drafts and allowing for a lengthy period of comment and consultation would be the most comprehensive approach.

Comments Regarding Extension of the Comment Period

Many commenters requested that the NIGC extend the comment period in which to provide comments on the proposed rule.

The NIGC received a total of 83 tribal comments on the proposed Facility License Standards. This was in addition to the 134 written comments received and considered on the prior working drafts of the rule and after meeting with over 113 tribal leaders in consultation on the proposed rule along with other Commission matters.

The Commission allowed for a 45-day comment period on the proposed rule. In deciding not to grant an extension of the comment period, the Commission took into account the significant number of comments received on the proposed rule and on the two prior drafts, totaling over 215 written comments combined. In addition the consultation period for this rule was well over one and one-half years, from the first draft in May 2006 to the publication of the proposed rule in October 2007.

Comments Regarding NIGC Compliance the Government Performance and Results Act

Several commenters suggested that the NIGC may have violated the Government Performance and Results Act (''GPRA'') by embarking on several rulemaking exercises without an overall plan in violation of Public Law 109–221.

The Commission agrees that Public Law 109–221, the Native American Technical Corrections Act of 2006, provides that the NIGC shall be subject to the GPRA. On September 30, 2007, the NIGC filed its performance and accountability report with the Office of Management and Budget. The Commission is currently seeking comments from tribes and all interested parties on the contents of this report.

Comments Regarding Financing of New Tribal Gaming Facilities

Several commenters were concerned that the Facility License Standards would have an impact on a tribe's ability to secure financing for gaming development projects.

The NIGC disagrees that requiring tribes to notify the Commission 120 days prior to opening a new facility will interfere with financing opportunities for new gaming operations. The purpose of the regulation is to inform the NIGC prior to the opening of a new facility. The NIGC believes any financing difficulties posed by compliance with this rule will be less significant than if it is later determined that a new facility has been constructed on lands that do not meet the requirements for ''Indian lands'' under IGRA. Further, the Facility License Standards have no effect in those circumstances where a tribe has not yet obtained financing due to uncertainty regarding the status of the lands.

Comments Regarding Specific Language

One commenter suggested the addition of the word ''standards'' wherever the phrase ''laws, resolutions, codes, policies, or procedures'' appears in the regulation. The Commission agrees and has revised §§ 502.22 and 559.5(b) accordingly.

One commenter suggested that standards pertaining to the environment and the public health and safety may be included in Secretarial procedures. Accordingly, the Commission revised § 502.22 to reflect this change from ''including standards negotiated under a tribal-state compact'' to ''including standards under a tribal-state compact or Secretarial procedures.''

One commenter noted the use of the phrase ''gaming operations'' in § 559.5(b) and correctly pointed out that the term should be ''gaming facilities'' as is used throughout the remainder of the regulation. This correction was made.

One commenter noted the use of the phrase ''gaming facilities, places or locations'' as contradicting the statutory language of IGRA which uses the phrase ''gaming places, facilities or locations.'' This correction was made in § 559.5(b)(6).

One commenter recommended that the Commission remove the phrase ''as needed'' following in §§ 552.2(i) and 559.7. The commenter felt this phrase was redundant as the statement prior reflects that the Chairman may use his or her discretion to request lands or environmental and public health and safety information. The Commission agrees and made this correction in the final rule.

One commenter noted that the title to § 559.6 was inconsistent with the language in the body of the section and recommended the Commission add ''or reopens'' to the title to match the requirements set out in the section. The Commission agrees and this change was made.

One commenter felt the proposed rules were unclear regarding the submission requirements to the

Commission. The Commission agreed that clarification could be added to ensure that tribes more clearly understood the requirements for initial and subsequent submissions of their facility licenses. The following changes were made in §§ 559.3, 559.4, and 559.5 to reflect clarification of the submission requirements. Section 559.3 in the proposed rule read ''[a]t least once every three years, a tribe shall issue a separate facility license to * * *.'' In the final rule, this section was changed to ''[a]t least once every three years after the initial issuance of a facility license, a tribe shall renew or reissue a separate facility license.'' Section 559.4 previously read ''When must a tribe submit a copy of a facility license to the Chairman?'' A tribe must submit to the Chairman a copy of each issued facility license within 30 days of issuance. This section is now clarified to read, ''When must a tribe submit a copy of a newly issued or renewed license to the Chairman? A tribe must submit to the Chairman a copy of each newly issued or renewed facility license within 30 days of issuance.'' Section 559.5 also changed to clarify the submission requirement. This section previously read ''What must a tribe submit to the Chairman with the copy of each facility license that has been issued?'' It now reads, ''What must a tribe submit to the Chairman with the copy of each facility license that has been issued or renewed?''

Comments Regarding Part 502—Definitions of This Chapter

A few commenters objected to the insertion of the definition of ''construction and maintenance of the gaming facility, and the operation of that gaming is conducted in a manner which adequately protects the environment and the public health and safety'' as ''clarification'' for 2710(b)(2)(E) of IGRA without any explanation or foundation for the NIGC's conclusion that this ''definition'' provides clarification.

The Commission believes that this definition and the entire rule clarifies what the expectations are for tribes to verify that that they are maintaining their gaming facilities in a manner that adequately protects the environment, public health and safety.

Another commenter objected to § 502.22(f), ''other environmental or public health and safety standards adopted by the tribe in light of climate, geography, and other local conditions and applicable to its gaming facilities, places or locations,'' as being too broad a standard.

The Commission retained subsection (f). The geographical and local conditions under which Indian gaming may occur vary greatly. This provision was included to capture the varying circumstances under which Indian gaming facilities may occur and allow for a tribe to address specific local and geographic conditions that may apply to its gaming facility.

One commenter stated that the phrase ''the construction and maintenance of the gaming operation and the operation of the gaming is conducted in a manner which adequately protects the environment, public health and safety,'' defies understanding.

While the Commission agrees that this language is not a model of clarity, this language is taken directly from IGRA at 25 U.S.C. 2710(b)(2)(E).

One commenter suggested consideration should be given to deleting the defined term proposed to be added as new § 502.22. The defined term is only used in the proposed regulations twice, at §§ 559.1(a) and 559(a)(3). Both of those sections work well if the sentence is used in its plain meaning sense, rather than in its defined meaning sense. Also, it is unconventional for the definition section to include substantive provisions, such as the sentence in the proposed definition which states that the ''laws * * * shall * * *.'' Finally, including substantive provisions in the definitional section could lead to misunderstandings by readers who read part 559 and miss the fact that the thirty word sentence starting with the words ''Construction and maintenance * * *'' is actually a defined term. Therefore, consideration should be given to simplifying the regulations by deleting the defined term and moving the substantive content contained in the proposed defined term to a location in § 559.5.

While this recommendation has its merits, the Commission ultimately decided to retain the definition.

The same commenter suggested that if the defined term is retained, consideration should be given to modifying the text by including a reference to Secretarial procedures and standards.

The Commission agrees to this recommendation.

One commenter suggested that language be added which referenced the various federal environmental laws that tribes are required to follow.

The Commission disagrees. The purpose of the rule is to identify environment, public health and safety laws that apply that are not federal laws.

One commenter suggested § 502.22 should be revised to add: ''(f) If an Environmental Impact Statement was prepared for the gaming facility, then the laws, resolutions, codes, policies or procedures in this area shall cover at a minimum, the construction, operational and maintenance standards identified in the EIS as well as mitigation measures that address the environmental consequences of the facility.''

The Commission disagrees that this change would be useful.

One commenter suggested that the Commission revise § 502.22 by changing ''construction and maintenance of the gaming facility, and the operation of that gaming'' to ''construction and maintenance of the gaming facility, and the operation of class II or class III gaming.''

The Commission disagrees. This language was taken directly from IGRA at 2710(b)(2)(E).

One commenter requests the addition of new § 502.23 to read as follows: ''Facility license means a separate license issued by a tribe to each place, facility, or location on Indian lands where the tribe elects to allow class II or class III gaming.''

No change is necessary, however, as this proposed language is identical to that of the rule.

Comments Regarding Part 522—Submission of Gaming Ordinance or Resolution

One commenter suggested language that clarifies that the information required in § 522.2 is in addition to the requirements of §§ 559.2 and 559.5.

The Commission disagrees as the submission requirement is already repeated in § 559.5.

A commenter suggested that consideration should be given to adding the phrase ''gaming eligibility'' or ''gaming eligibility (for lands acquired after October 17, 1988)'' to § 522.2 this and to § 559.7.

The Commission disagrees that this recommendation would clarify the rule.

A commenter suggested that consideration should be given to deleting the phrase ''as needed'' in this section to avoid disputes as to whether the documentation requested by the Chairman is ''needed.''

The Commission agrees to this change.

Comments Regarding Part 559—Facility License Notifications, Renewals, and Submissions

A commenter urged the Commission to revise the draft rule to distinguish between class II and class III gaming in each subsection.

The Commission has not made this revision. The requirements for submission of facility license remain the same whether gaming is occurring in a class II or class III gaming facility.

One commenter suggested that since part 559 is presumably intended to apply to a ''gaming operation'' as that term is defined in § 502.10, consideration could be given to changing the phrase ''the operation of class II or class III gaming'' to ''class II or class III gaming operation.''

The Commission uses the reference to ''gaming places, facilities or locations'' to remain consistent with IGRA.

Another commenter recommended that part 559 should be clarified to determine whether the Commission intends to regulate (i) a tribe; (ii) place, facility or location; or (iii) both.

No change was made as a result of this comment. The Commission believes it is clear from the language of IGRA that ''a separate license issued by the Indian tribe shall be required for each place, facility, or location.''

Comments Regarding § 599.1—What is the scope and purpose of this part?

One commenter suggested that the phrase ''the construction and maintenance of the gaming facility'' be changed to ''the gaming facility is constructed and maintained.''

The Commission declined to make this change as the language is taken from IGRA at 2710(b)(2)(E).

One commenter observed that § 559.1 fails to require that the land must be under the jurisdiction of the tribe. Furthermore, the regulations do not detail the eligibility requirements for gaming on Indian lands, and make clear that the land must be under the jurisdiction of the tribe.

The purpose of part 559 is to ensure that each facility where gaming is operated is located on Indian lands eligible for gaming pursuant to IGRA. IGRA sets out the eligibility requirements and jurisdictional requirements for gaming to occur on Indian lands. Consequently, no additional language is contemplated.

One commenter observed that the regulation fails to require that the NIGC actually make a determination [on Indian lands] and fails to provide a process for such determination. Furthermore, the regulations as proposed apply only to new facilities when the same rules need to be applied to existing facilities.

The Commission did not intend, under these rules, to develop a broad program for making Indian lands decisions. The Commission makes such decisions in the context of its enforcement actions and approval of management contracts and site-specific ordinances.

One commenter recommended that the notice requirement include documentation that the tribe seeking a new facility license complies with the class III conditions necessary to engage in casino-style gambling. The commenter recommended that the tribe submit a valid state-tribal compact as evidence of compliance.

No change was made as a result of this comment. The Commission has endeavored to take into consideration that various documentation may be available at other federal agencies (i.e., Department of the Interior) and has removed any duplicative submission requirements for documents that are available through other means.

Several commenters requested that additional language be added requiring notification to surrounding local and state governmental entities when tribes submit notice to the Chairman that a facility license is under consideration for a new facility.

The Commission disagrees. Indian gaming is an expression of the sovereign right of Indian tribes to regulate their own affairs on their own land, separate and apart from the laws and requirements of the states or their political subdivisions. To the extent Congress wished the involvement of the states in Indian gaming, IGRA so provides, and the Commission does not believe it to be appropriate to add more. As facility licensing is a matter of gaming regulation, notification to the states may be provided for by tribal-state compacts.

One commenter suggested that that the proposed ''charitable events'' exception creates a loophole that swallows the notice requirement. Absent a reasonable numeric cap, a tribe could sponsor a string of charitable events lasting six days or less on a continuous basis without giving notice to the NIGC or, if class III gaming is involved, the state that a tribe issued a new facilities license.

The Commission disagrees. The language of § 559.2(b) makes clear that this exception relates to the ''occasional charitable event'' and not to continuous gaming or class III gaming.

Comment Regarding § 559.4—When must a tribe submit a copy of a facility license to the Chairman?

One commenter requested additional language that requires notification to surrounding local and state governmental entities.

The Commission disagrees. Indian gaming is an expression of the sovereign right of Indian tribes to regulate their own affairs on their own land, separate and apart from the laws and requirements of the states or their political subdivisions. To the extent Congress wished the involvement of the states in Indian gaming, IGRA so provides, and the Commission does not believe it to be appropriate to add more. As facility licensing is a matter of gaming regulation, notification to the states may be provided for by tribal-state compact.

Comments Regarding § 559.5—What must a tribe submit to the Chairman with the copy of each facility license that has been issued?

One commenter recommended that the NIGC require submission of applicable state or federal licenses or permits that demonstrate that a tribe is in compliance with federal or state environmental laws applicable to its gaming operation.

The Commission disagrees. The NIGC has determined that for purposes of this rule, Tribes will supply a list of identified applicable laws and that it shall be within the Chairman's discretion to request additional information if necessary. These state and federal licenses could be requested by the Chairman if a need for such documentation is deemed necessary.

One commenter suggested deleting the term ''identified'' in § 559.5(a)(1) and replacing with ''adopted, issued or agreed to'' as any law or standard which the tribe has ''identified'' but has not adopted, issued or agreed to, is without legal effect or significance.

The Commission declined to make this change as the term identified is a broader term which allows tribes to show that they are aware of the environment, public health and safety laws that apply to their facilities even if those laws may not have been specifically promulgated by the tribes themselves.

One commenter suggested that in order to be consistent with the Interpretative Rule, the Commission should consider requiring the tribe to certify that it has established policies, procedures or systems for monitoring compliance. No change was made based on this suggestion. The Commission anticipates that the three-year renewal process for facility licensing will ensure that a system for ongoing monitoring is in place.

One commenter recommended that clarification is needed in § 559.5(a)(3) to determine whether the regulation intends for the entity or thing which the tribe is to certify to be in compliance with various laws is (i) the tribe; (ii) the

place, facility or location; (iii) the gaming operation; or (iv) some combination of the three. The language adopts the approach that the tribe certifies that both the gaming operation and the place, facility or location (but not the tribe) are in compliance with the identified laws.

The rule mirrors the language used in IGRA when it places regulatory responsibility on a ''tribe.'' Nothing, however, prohibits a tribe from vesting a tribal gaming commission with the authority to act in compliance with the rule.

One commenter suggested that consideration should be given to adding appropriate language to accommodate the possibility that, at the time of the tribe's submission to the Commission, the gaming operation and or gaming place, facility or location is not in full compliance. The commenter recommended adding the phrase ''or, if the tribe has identified any noncompliance, the tribe has taken appropriate action to ensure future compliance'' to this section.

The Commission agreed with this concept and changed this section to require that if a tribe is not in compliance with any or all of its environmental and public health and safety laws, resolutions, codes, policies, standards or procedures, the tribe will identify those with which it is not in compliance, and will adopt and submit its written plan for the specific action it will take, within a period not to exceed six months, required for compliance. At the successful completion of such written plan, or at the expiration of the period allowed for its completion, the tribe shall report the status thereof to the Commission. In the event that the tribe estimates that action for compliance will exceed six months, the Chairman must concur in such an extension of the time period, otherwise the tribe will be deemed noncompliant. The Chairman will take into consideration the consequences on the environment and the public health and safety, as well as mitigating measures the tribe may provide in the interim, in his or her consideration of requests for such an extension of the time period.

One commenter pointed out the confusion in usage of the terms ''facilities'' and ''operations'' with the correct term being ''gaming facilities.''

The Commission agreed with the commenter and changed the term to be consistent throughout the regulation.

One commenter suggested that the language of § 559.5(b) as written is overbroad and unclear as to whether it requires only a list of items material to the topic, or requires detailed information of specific laws, resolutions, codes, policies, or procedures for each area. The commenter also requested that the Commission specify how much detail is required in the information to be submitted with the facility license. The commenter requested an option for the gaming operation to list the name of the applicable policy and procedure manual or to identify individual items that are material, and to allow an option to develop and submit a matrix in the form of a table or spreadsheet.

The Commission recognizes that tribes may utilize varying internal methods for maintaining this information and refrained from specifying what form the list of applicable laws must take. This will allow each facility to submit the information in the form or format that is appropriate for each facility without the NIGC dictating a particular approach which may require increased resources at the tribal level.

One commenter suggested that consideration should be given to adding the phrase ''to the extent not already addressed by applicable federal laws, regulations and standards'' to § 559.5(b).

The Commission did not make this change. The language in this section already addresses the commenter's concern with the phrase ''other than federal laws.''

One commenter suggested the Commission consider whether the topics of ''fire suppression'' and ''law enforcement and security'' in § 559.5(b)(1) should be independent topics rather than subsets of ''emergency preparedness.''

The Commission determined that the topics are appropriately grouped and declined to make this change.

One commenter pointed out that the phrase ''facility, place or location'' in § 559.5(a)(6) differs from the statutory language of IGRA which reads ''place, facility or location.''

The Commission agreed with this comment and made the change.

One commenter requested that the Commission include tribal regulation in its list of laws governing the gaming operation in § 559.5(a)(6).

The Commission did not make this change because the term ''laws'' in this section is meant to include all laws applicable to the gaming operations, which includes tribal laws.

One commenter requested that if a tribe's environment, public health and safety laws are available in a public location, the tribe notify the Commission so the Commission can locate such items and as necessary can notify members of the public who make inquires.

The Commission did not make this change in the language of the rule. Any information obtained from tribes in relation to this rule will be governed by the Freedom of Information Act. However, if the information provided by the tribe is available publically and the Commission has such information available, it could direct inquiries to the appropriate public site.

Section 559.6—Does a tribe need to notify the Chairman if a facility license is terminated or not renewed or if a gaming place, facility, or location closes?

One commenter recommended that that state Governors also receive notification of the termination or non-renewal of a class III facility license by a tribe, or if such a gaming facility closes or reopens.

The Commission disagrees. Indian gaming is an expression of the sovereign right of Indian tribes to regulate their own affairs on their own land, separate and apart from the laws and requirements of the states or their political subdivisions. To the extent Congress wished the involvement of the states in Indian gaming, IGRA so provides, and the Commission does not believe it to be appropriate to add more. As facility licensing is a matter of gaming regulation, notification to the states may be provided for by tribal-state compacts.

One commenter recommended adding ''reopens'' to the end of the title in § 559.6. The language would read ''Does a tribe need to notify the Chairman if a facility license is terminated or not renewed or if a gaming place, facility, or location closed or reopens?''

The Commission agrees with this recommended change.

Section 559.7—May the Chairman request Indian lands or environmental and public health and safety documentation regarding any gaming place, facility, or location where gaming will occur?

Several commenters were concerned that the language in this section relating to the Chairman's discretion in requesting additional documentation was too broad and allowed for too much interpretation on what to request on the part of the Chairman.

The Commission has endeavored to require only the minimum obligation for documentation submission, but must reserve the right of the Chairman to request additional information in the event it is necessary to carry out his or her duties in ensuring that all gaming

facilities are located on Indian lands and are operated in a manner that adequately protects the environment, public health and safety.

One commenter requested language in this section to clarify that the ''Tribe'' and ''Tribal Gaming Regulatory Authority are separate entities and it is the Tribal Gaming Regulatory Authority who is responsible for enforcing the environment, public health and safety laws and for issuing the facility license.''

The rule mirrors the language used in IGRA when it places regulatory responsibility on a ''tribe.'' Nothing, however, prohibits a tribe from vesting a tribal gaming commission with the authority to act in compliance with the rule.

One commenter requested that the Commission delete the phrase ''as needed'' from § 559.7 or change to ''from time to time'' so there is no dispute as to what is ''needed.''

The Commission agreed with commenter and removed ''as needed'' from this section.

List of Subjects in 25 CFR Parts 502, 522, 559, and 573

Gambling, Indians—lands, Indians—tribal government, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, amend 25 CFR Chapter III as follows:

PART 502—DEFINITIONS OF THIS CHAPTER

■ 1. The authority citation for part 502 continues to read as follows:

Authority: 25 U.S.C. 2701 *et seq.*

■ 2. Add new § 502.22 to read as follows:

§ 502.22 Construction and maintenance of the gaming facility, and the operation of that gaming is conducted in a manner which adequately protects the environment and the public health and safety.

Construction and maintenance of the gaming facility, and the operation of that gaming is conducted in a manner which adequately protects the environment and the public health and safety means a tribe has identified and enforces laws, resolutions, codes, policies, standards or procedures applicable to each gaming place, facility or location that protect the environment and the public health and safety, including standards under a tribal-state compact or Secretarial procedures. Laws, resolutions, codes, policies, standards or procedures in this area shall cover, at a minimum:

(a) Emergency preparedness, including but not limited to fire suppression, law enforcement, and security;

(b) Food and potable water;

(c) Construction and maintenance;

(d) Hazardous materials;

(e) Sanitation (both solid waste and wastewater); and

(f) Other environmental or public health and safety standards adopted by the tribe in light of climate, geography, and other local conditions and applicable to its gaming facilities, places or locations.

■ 3. Add new § 502.23 to read as follows:

§ 502.23 Facility license.

Facility license means a separate license issued by a tribe to each place, facility, or location on Indian lands where the tribe elects to allow class II or III gaming.

PART 522—SUBMISSION OF GAMING ORDINANCE OR RESOLUTION

■ 4. The authority citation for part 522 continues to read as follows:

Authority: 25 U.S.C. 2706, 2710, 2712.

■ 5. Add new paragraph (i) to § 522.2 to read as follows:

§ 522.2 Submission requirements.

* * * * *

(i) A tribe shall provide Indian lands or environmental and public health and safety documentation that the Chairman may in his or her discretion request as needed.

■ 6. Add new part 559 to read as follows:

PART 559—FACILITY LICENSE NOTIFICATIONS, RENEWALS, AND SUBMISSIONS

Sec.

559.1 What is the scope and purpose of this part?
559.2 When must a tribe notify the Chairman that it is considering issuing a new facility license?
559.3 How often must a facility license be renewed?
559.4 When must a tribe submit a copy of a newly issued or renewed facility license to the Chairman?
559.5 What must a tribe submit to the Chairman with the copy of each facility license that has been issued or renewed?
559.6 Does a tribe need to notify the Chairman if a facility license is terminated or not renewed or if a gaming place, facility, or location closes or reopens?
559.7 May the Chairman request Indian lands or environmental and public health and safety documentation regarding any gaming place, facility, or location where gaming will occur?
559.8 May a tribe submit documents required by this part electronically?

Authority: 25 U.S.C. 2701, 2702(3), 2703(4), 2705, 2706, 2710 and 2719.

§ 559.1 What is the scope and purpose of this part?

(a) The purpose of this part is to ensure that each place, facility, or location where class II or III gaming will occur is located on Indian lands eligible for gaming and that the construction and maintenance of the gaming facility, and the operation of that gaming is conducted in a manner which adequately protects the environment and the public health and safety pursuant to the Indian Gaming Regulatory Act.

(b) Each gaming place, facility, or location conducting class II or III gaming pursuant to the Indian Gaming Regulatory Act or on which a tribe intends to conduct class II or III gaming pursuant to the Indian Gaming Regulatory Act is subject to the requirements of this part.

§ 559.2 When must a tribe notify the Chairman that it is considering issuing a new facility license?

(a) A tribe shall submit to the Chairman a notice that a facility license is under consideration for issuance at least 120 days before opening any new place, facility, or location on Indian lands where class II or III gaming will occur. The notice shall contain the following:

(1) The name and address of the property;

(2) A legal description of the property;

(3) The tract number for the property as assigned by the Bureau of Indian Affairs, Land Title and Records Offices, if any;

(4) If not maintained by the Bureau of Indian Affairs, Department of the Interior, a copy of the trust or other deed(s) to the property or an explanation as to why such documentation does not exist; and

(5) If not maintained by the Bureau of Indian Affairs, Department of the Interior, documentation of the property's ownership.

(b) A tribe does not need to submit to the Chairman a notice that a facility license is under consideration for issuance for occasional charitable events lasting not more than a week.

§ 559.3 How often must a facility license be renewed?

At least once every three years after the initial issuance of a facility license, a tribe shall renew or reissue a separate facility license to each existing place,

facility or location on Indian lands where a tribe elects to allow gaming.

§ 559.4 When must a tribe submit a copy of a newly issued or renewed facility license to the Chairman?

A tribe must submit to the Chairman a copy of each newly issued or renewed facility license within 30 days of issuance.

§ 559.5 What must a tribe submit to the Chairman with the copy of each facility license that has been issued or renewed?

(a) A tribe shall submit to the Chairman with each facility license an attestation certifying that by issuing the facility license:

(1) The tribe has identified and enforces the environment and public health and safety laws, resolutions, codes, policies, standards or procedures applicable to its gaming operation;

(2) The tribe is in compliance with those laws, resolutions, codes, policies, standards, or procedures, or, if not in compliance with any or all of the same, the tribe will identify those with which it is not in compliance, and will adopt and submit its written plan for the specific action it will take, within a period not to exceed six months, required for compliance. At the successful completion of such written plan, or at the expiration of the period allowed for its completion, the tribe shall report the status thereof to the Commission. In the event that the tribe estimates that action for compliance will exceed six months, the Chairman must concur in such an extension of the time period, otherwise the tribe will be deemed noncompliant. The Chairman will take into consideration the consequences on the environment and the public health and safety, as well as mitigating measures the tribe may provide in the interim, in his or her consideration of requests for such an extension of the time period.

(3) The tribe is ensuring that the construction and maintenance of the gaming facility, and the operation of that gaming is conducted in a manner which adequately protects the environment and the public health and safety.

(b) A document listing all laws, resolutions, codes, policies, standards or procedures identified by the tribe as applicable to its gaming facilities, other than Federal laws, in the following areas:

(1) Emergency preparedness, including but not limited to fire suppression, law enforcement, and security;

(2) Food and potable water;

(3) Construction and maintenance;

(4) Hazardous materials;

(5) Sanitation (both solid waste and wastewater); and

(6) Other environmental or public health and safety laws, resolutions, codes, policies, standards or procedures adopted by the tribe in light of climate, geography, and other local conditions and applicable to its gaming places, facilities, or locations.

(c) After the first submission of a document under paragraph (b) of this section, upon reissuing a license to an existing gaming place, facility, or location, and in lieu of complying with paragraph (b) of this section, a tribe may certify to the Chairman that it has not substantially modified its laws protecting the environment and public health and safety.

§ 559.6 Does a tribe need to notify the Chairman if a facility license is terminated or not renewed or if a gaming place, facility, or location closes or reopens?

A tribe must notify the Chairman within 30 days if a facility license is terminated or not renewed or if a gaming place, facility, or location closes or reopens.

§ 559.7 May the Chairman request Indian lands or environmental and public health and safety documentation regarding any gaming place, facility, or location where gaming will occur?

A tribe shall provide Indian lands or environmental and public health and safety documentation that the Chairman may in his or her discretion request.

§ 559.8 May a tribe submit documents required by this part electronically?

Yes. Tribes wishing to submit documents electronically should contact the Commission for guidance on acceptable document formats and means of transmission.

PART 573—ENFORCEMENT

■ 7. The authority citation for part 573 continues to read as follows:

Authority: 25 U.S.C. 2705(a)(1), 2706, 2713, 2715.

■ 8. Amend § 573.6 by revising paragraph (a)(4) to read as follows:

§ 573.6 Order of temporary closure.

(a) * * *

(4) A gaming operation operates for business without a license from a tribe, in violation of part 522 or part 559 of this chapter.

* * * * *

Dated: December 31, 2007.

Philip N. Hogen,

Chairman.

Cloyce V. Choney,

Vice-Chairman.

[FR Doc. E8–1862 Filed 1–31–08; 8:45 am]

BILLING CODE 7565–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1253

RIN 3095–AB57

[Docket NARA–08–0001]

Locations and Hours; Changes in NARA Research Room Hours

AGENCY: National Archives and Records Administration (NARA).

ACTION: Interim final rule; request for comment.

SUMMARY: NARA is revising its regulations to increase the number of hours its archival research rooms are open in the Washington, DC, area. At the beginning of fiscal year (FY) 2007, NARA reduced the extended hours that these research rooms were open to the public because of fiscal constraints. For the FY 2008 NARA budget, the Congress has provided funding to increase the hours. This regulation will affect individuals who use our archival research rooms in the National Archives Building and National Archives at College Park facility. This rule also adds the Nixon Presidential Library and revises the address of our Fort Worth facility to our list of research facilities.

DATES: This interim final rule is effective April 14, 2008. Comments on this interim final rule must be received by March 17, 2008 at the address shown below. Any changes to the rule resulting from this comment period will be made as soon as practicable after the April 14, 2008 effective date.

ADDRESSES: NARA invites interested persons to submit comments on this interim final rule. Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* Submit comments by facsimile transmission to 301–837–0319.
- *Mail:* Send comments to Regulations Comments Desk (NPOL), Room 4100, Policy and Planning Staff, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001.

• *Hand Delivery or Courier:* Deliver comments to 8601 Adelphi Road, College Park, MD.

FOR FURTHER INFORMATION CONTACT: Nancy Allard at 301–837–1477 or Jennifer Davis Heaps at 301–837–1801 or via fax number 301–837–0319.

SUPPLEMENTARY INFORMATION: A discussion of the changes we are making in this rule follows.

Research Room Hours in DC Area Facilities

The FY 2008 NARA Budget in the Consolidation Appropriations Act of 2007 signed by President Bush on December 26, 2007, includes $1.3 million to restore evening and Saturday hours in the research rooms in the National Archives Building and the National Archives at College Park (Archives II). Prior to October 1, 2006, these research rooms were open three evenings per week (Tuesday, Thursday, and Friday) and every Saturday. Under this interim final rule, the research rooms will be open from 9 a.m. to 5 p.m. on Monday, Tuesday, and Saturday. On Wednesday, Thursday, and Friday they will be open from 9 a.m. to 9 p.m. We decided to make this adjustment to the previous schedule so that out-of-town researchers will have consecutive evenings along with Saturday to work. This schedule will also make staffing the rooms easier for managers. We set the effective date of the new hours as April 14, 2008 to allow time to hire and train the additional research room staff and to adjust the terms of the security guard contract.

When we restore evening hours our researchers will need to have records provided to them late in the afternoon. We will provide the additional service of pulling records from the stacks at 3:30 p.m. on the three weekdays that we are open in the evening. As was the case prior to October 2006, there will be no records pulled on Saturday.

Other Changes in This Rule

In § 1253.3, we are adding the address and contact information for the Richard Nixon Presidential Library and Museum, which became a NARA Presidential Library on July 11, 2007. In § 1253.6(i), we have revised the address and contact information for the Fort Worth Federal Records Center, which moved to a new location in 2007.

Waiver of Proposed Rulemaking

The issuance of an ''interim final rule'' may be followed under the ''good-cause'' exemption of 5 U.S.C. 553(b)(3)(B) as ''impracticable'' or ''contrary to the public interest.'' In this instance, good cause exists because delay in implementation of the new hours would be contrary to the public interest and the intent of the Congress.

Regulatory Impact

This rule is not a significant regulatory action for the purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, I certify that this rule will not have a significant impact on a substantial number of small entities because it affects individual researchers. This regulation does not have any federalism implications.

List of Subjects in 36 CFR Part 1253

Archives and records.

■ For the reasons set forth in the preamble, NARA amends chapter XII of title 36, Code of Federal Regulations, as follows:

PART 1253—LOCATION OF NARA FACILITIES AND HOURS OF USE

■ 1. The authority citation for part 1253 continues to read as follows:

Authority: 44 U.S.C. 2104(a).

■ 2. Amend § 1253.1 by revising paragraph (a) to read as follows:

§ 1253.1 National Archives Building.

(a) The National Archives Building is located at 700 Pennsylvania Avenue, NW., Washington, DC 20408. Business hours are 8:45 a.m. to 5:15 p.m., Monday through Friday, except Federal holidays when the building is closed. Hours for the Research Center and the Central Research room are as follows:

(1) Monday and Tuesday, 9 a.m. to 5 p.m.;

(2) Wednesday, Thursday, and Friday, 9 a.m. to 9 p.m.; and

(3) Saturday, 9 a.m. to 5 p.m.

* * * * *

■ 3. Amend § 1253.2 by revising paragraph (b) to read as follows:

§ 1253.2 National Archives at College Park.

* * * * *

(b) Research complex hours are as follows, except Federal holidays:

(1) Monday and Tuesday, 9 a.m. to 5 p.m.;

(2) Wednesday, Thursday, and Friday, 9 a.m. to 9 p.m.; and

(3) Saturday, 9 a.m. to 5 p.m.

* * * * *

■ 4. Amend § 1253.3 by redesignating paragraphs (g) through (k) as paragraphs (h) through (l) respectively, and adding a new paragraph (g) to read as follows:

§ 1253.3 Presidential Libraries.

* * * * *

(g) Richard Nixon Library, California is located at 18001 Yorba Linda Boulevard, Yorba Linda, CA 92886–3903. The phone number is 714–983–9120 and the fax number is 714–983–9111. The e-mail address is *nixon@nara.gov*. The Richard Nixon Library, Maryland is located at 8601 Adelphi Road, College Park, MD 20740–6001. The phone number is 301–837–3290 and the fax number is 301–837–3202. The e-mail address is *nixon@nara.gov*.

* * * * *

■ 5. Amend § 1253.6 by revising paragraph (i) to read as follows:

§ 1253.6 Records Centers.

* * * * *

(i) NARA—Southwest Region (Fort Worth) is located at 1400 John Burgess Drive, Fort Worth, Texas 76140. The hours are 8 a.m. to 4:30 p.m., Monday through Friday. The telephone number is 817–551–2000.

* * * * *

Dated: January 28, 2008.

Allen Weinstein,

Archivist of the United States.

[FR Doc. E8–1947 Filed 1–31–08; 8:45 am]

BILLING CODE 7515–01–P

POSTAL SERVICE

39 CFR Part 20

Priority Mail® Large Flat-Rate Box—International

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: This final rule revises the *Mailing Standards of the United States Postal Service*, International Mail Manual (IMM®), to add a new Priority Mail® Large Flat-Rate Box that has been approved by the Board of Governors of the United States Postal Service for domestic and international Priority Mail shipments.

The new Priority Mail large flat-rate box is approximately 50 percent larger than the regular flat-rate boxes currently available. Two prices will apply to the large flat-rate box when mailed to international destinations:

• $29.95 for Priority Mail International™ service to Canada and Mexico.

• $49.95 for Priority Mail International service to all other countries.

The larger flat-rate box is identified by the words ''Large Flat-Rate Box'' printed on the packaging.

DATES: *Effective Date:* March 3, 2008.

FOR FURTHER INFORMATION CONTACT: Christy Bonning, 202–268–2108, or Garry Rodriguez, 202–268–7281, United States Postal Service.

SUPPLEMENTARY INFORMATION: The Postal Service first approved the domestic Priority Mail flat-rate box as an experiment more than three years ago. Board of Governors' Decision, Docket No. MC 2004–2 (October 29, 2004). Subsequently, a permanent classification for the flat-rate box was approved as part of the R2006–1 omnibus rate case. The use of Priority Mail flat-rate boxes for Priority Mail International shipments was adopted concurrently with the rate case.

The offering of a larger Priority Mail flat-rate box will enhance customer choice, convenience, and ease of use. Accordingly, the Postal Service offers a new Priority Mail large flat-rate box with a weight restriction of 20 pounds to international destinations. The dimensions are 12¼″ x 12¼″ x 6″ exterior, and 12″ x 12″ x 5½″ interior.

The new Priority Mail large flat-rate box will be available for order online at USPS.com and in most post offices nationwide.

The Postal Service adopts the following changes to *Mailing Standards of the United States Postal Service*, International Mail Manual (IMM), which is incorporated by reference in the *Code of Federal Regulations*. See 39 CFR part 20.

List of Subjects in 39 CFR Part 20

Foreign relations, International postal services.

■ Accordingly, 39 CFR part 20 is amended as follows:

PART 20—[AMENDED]

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

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408, 3632 and 3633.

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

2 Conditions for Mailing

* * * * *

230 Priority Mail International

* * * * *

[Revise heading of 232 as follows:]

232 Priority Mail International Flat-Rate Envelope

* * * * *

[Reverse section 233 in its entirety with sections 234 and 234.1. Delete 234.2 in its entirety. Renumber 234.3 through 234.5 as new 234.5 through 234.7.]

[Revise heading of renumbered 233 (old 234) as follows:]

233 Priority Mail International Flat-Rate Boxes

[Add a new 233.1 and renumber 233.1 (old 234.1) as 233.2.]

233.1 General

All mailable items that may be sent as Priority Mail International (see 231.1) may be sent in Priority Mail flat-rate boxes when the contents fit securely and are entirely confined within the box. The box flaps must be able to close within the normal folds.

A flat-rate box may be insured. See 320 and Individual Country Listings for insurance availability, limitations, and coverage. Registered Mail service is not available.

[Revise heading and text of renumbered 233.2 (old 234.1) as follows:]

233.2 Postage

The Priority Mail flat-rate boxes are charged flat rates. The price does not depend on the weight of the item. Postage is required for each piece. Exhibit 233.2 lists the rates for Priority Mail International flat-rate boxes.

[Revise heading and table of Exhibit 233.2 (old 234.1) as follows:]

Exhibit 233.2

Priority Mail International—Flat-Rate Boxes

International destination	Regular flat-rate box	Large flat-rate box
Canada & Mexico	$23.00	$29.95
All other countries	37.00	49.95

[In the Note of 233.2 keep only the first sentence; delete rest of text (sentences two through five).]

[Add new 233.3 as follows:]

233.3 Weight Limit

The weight limit for each flat-rate box is 20 pounds.

[Add new 233.4 as follows:]

233.4 Customs Forms Required

All Priority Mail International flat-rate boxes must bear a properly completed PS Form 2976–A.

234 Priority Mail International Parcels

[Add new 234.1 and renumber 234.1 through 234.3 as new 234.2 through 234.4.]

234.1 General

Prices for parcels not using a flat-rate box vary by weight and country rate group. See Individual Country Listings.

234.2 Indemnity

* * * * *

[Revise the second Note in 234.2 as follows:]

Note: Priority Mail parcels and flat-rate boxes may be insured, but not Priority Mail flat-rate envelopes (see 322).

234.3 Exclusions

* * * * *

234.4 Ordinary Priority Mail International Weight and Indemnity Limits

* * * * *

Neva R. Watson,

Attorney, Legislative.

[FR Doc. E8–1776 Filed 1–31–08; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

39 CFR Part 111

Express Mail Sunday/Holiday Delivery Premium

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service™ is revising ExpressMail® service to reflect a premium of $12.50 in addition to current postage for guaranteed Sunday or holiday delivery of Express Mail pieces.

DATES: *Effective Date:* March 3, 2008.

FOR FURTHER INFORMATION CONTACT: Bert Olsen, 202–268–7276.

We adopt the following amendments to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®), incorporated by reference in the *Code of Federal Regulations.* See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

■ Accordingly, 39 CFR part 111 is amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 is revised 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, 3626, 3632, 3633, 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), as follows:

* * * * *

100 Retail Letters, Cards, Flats, and Parcels

* * * * *

110 Express Mail

113 Rates and Eligibility

* * * * *

Exhibit 1.3 Express Mail Rates—Same Day Airport Service Suspended

* * * * *

[Add an additional footnote, number 3, to Exhibit 1.3, Express Mail Rate Chart, as follows:]

3. For Sunday/holiday delivery, add $12.50.

* * * * *

[Renumber current 1.5 through 1.7 as new 1.6 through 1.8, and add new 1.5 as follows:]

1.5 Sunday and Holiday Premium

When delivery is guaranteed for a Sunday or holiday, there is a premium of $12.50, unless paying via an Express Mail Manifesting Agreement. Customers not desiring delivery on a Sunday or a holiday may avoid the premium by opting for guaranteed delivery on the subsequent delivery day.

* * * * *

700 Special Standards

* * * * *

705 Advanced Preparation and Special Postage Payment Systems

* * * * *

2.0 Manifest Mailing System

* * * * *

2.6 Express Mail Manifesting Agreements

* * * * *

2.6.3 Service Guarantee

* * * * *

[Revise current text to be identified as item b and add a new a as follows:]

a. Mailers using Express Mail Manifesting (EMM) receive Sunday/holiday guaranteed delivery at no additional charge without paying a premium.

* * * * *

Neva R. Watson,

Attorney, Legislative.

[FR Doc. E8–1775 Filed 1–31–08; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

39 CFR Part 111

Priority Mail® Large Flat-Rate Box—Domestic APO/FPO

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: This final rule revises the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®), to add the new Priority Mail® Large Flat-Rate Box that has been approved by the Board of Governors of the United States Postal Service.

The new Priority Mail large flat-rate box is approximately 50 percent larger than the regular flat-rate boxes currently available. The prices for shipping a Priority Mail large flat-rate box to an APO/FPO ZIP Code™ destination address, or to a domestic ZIP Code address are as follows:

- $10.95 to APO/FPO destination addresses.
- $12.95 to domestic addresses.

The new flat-rate box is identified by the words ''Large Flat-Rate Box'' printed on the packaging.

Items to an APO/FPO address may be shipped in the Priority Mail large flat-rate box or in a special version of the box identified with the additional logo: ''Americasupportsyou.mil.''

The Priority Mail large flat-rate box also may be used for mailing to international destinations at large flat-rate box prices specific to international items.

Domestic or international large flat-rate box prices will apply to the special version of the APO/FPO flat-rate box if used for non-APO/FPO addresses.

DATES: *Effective Date:* March 3, 2008.

FOR FURTHER INFORMATION CONTACT: Christy Bonning, 202–268–2108, or Garry Rodriguez, 202–268–7281, United States Postal Service.

SUPPLEMENTARY INFORMATION: The Postal Service first approved the Priority Mail flat-rate box as an experiment more than three years ago. Board of Governors' Decision, Docket No. MC 2004–2 (October 29, 2004). Subsequently, a permanent classification for the flat-rate box was approved as part of the R2006–1 omnibus rate case.

The Priority Mail flat-rate box has been a big success and has proven to provide value to customers in the form of convenience and ease of use.

This success suggested a market for a larger Priority Mail flat-rate box. Such an offering would enhance customer choice, convenience, and ease of use. Accordingly, the Postal Service is offering a new, Priority Mail large flat-rate box.

The new boxes are approximately 50 percent larger than the regular flat-rate boxes currently available. The dimensions are 12¼″ x 12¼″ x 6″ exterior, and 12″ x 12″ x 5½″ interior.

The weight restriction for the large flat-rate box is 70 pounds to APO/FPO and domestic destinations and 20 pounds to International destinations.

The lower rate for APO/FPO destinations provides an opportunity for the Postal Service to show support for American troops stationed abroad and their families.

The new Priority Mail large flat-rate box will be available for order online at USPS.com and in most post offices nationwide.

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

Administrative practice and procedure, Postal Service.

■ Accordingly, 39 CFR part 111 is amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 is revised 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, 3632, 3633, and 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), as follows:

* * * * *

100 Retail Mail Letters, Cards, Flats, and Parcels

* * * * *

120 Priority Mail

123 Rates and Eligibility

1.0 Priority Mail Rates and Fees

[Delete 1.1 in its entirety. Renumber current 1.2 through 1.10 as new 1.1 through 1.9.]

[Revise the heading of renumbered 1.1 as follows:]

1.1 Rate Application

* * * * *

1.2 Minimum Rate for Parcels to Zones 1–4

* * * * *

Exhibit 1.2 Priority Mail Rates

* * * * *

[Revise footnote number 2 to reflect new numbering:]

2. Parcels addressed for delivery to zones 5–8 that exceed 1 cubic foot (1,728 cubic inches) are charged based on the actual weight (under 1.1), or the dimensional weight (as calculated in 1.3.1 or 1.3.2), whichever is greater.

* * * * *

[Revise footnote number 5 to add new flat-rate box as follows:]

5. Priority Mail flat-rate boxes provided by the USPS, regardless of weight or destination:

- $8.95 is charged for material sent in Priority Mail regular flat-rate boxes (FRB–2) or (FRB–1) to domestic and APO/FPO addresses.
- $10.95 is charged for material sent in a Priority Mail large flat-rate box to APO/FPO destination addresses.
- $12.95 is charged for material sent in a Priority Mail large flat-rate box to domestic destinations.

* * * * *

[Revise the heading of renumbered 1.4 as follows:]

1.4 Flat-Rate Envelopes and Boxes

* * * * *

[Reverse the order of renumbered 1.4.1 and 1.4.2.]

* * * * *

[Revise renumbered 1.4.2 as follows:]

1.4.2 Flat-Rate Boxes—Rates and Eligibility

Each USPS-produced Priority Mail flat-rate box, regardless of the actual weight of the piece or its destination, is charged:

a. $8.95 for material sent in Priority Mail regular flat-rate boxes (FRB–2) or (FRB–1) to domestic and APO/FPO addresses.

b. $10.95 for material sent in a Priority Mail large flat-rate box to APO/FPO destination addresses (see 703.2).

c. $12.95 for material sent in a Priority Mail large flat-rate box to domestic destinations.

Items to an APO/FPO address may be shipped in the Priority Mail large flat-rate box or in a special version of the box identified with the additional logo: ''Americasupportsyou.mil.'' If the special version of the APO/FPO flat-rate box is used for non-APO/FPO addresses, the domestic or international large flat-rate box prices will apply. Only USPS-produced flat-rate boxes are eligible for the flat-rate box prices.

* * * * *

700 Special Standards

703 Nonprofit Standard Mail and Other Unique Eligibility

* * * * *

2.0 Overseas Military Mail

2.1 Basic Standards

* * * * *

[Renumber current 2.1.2 through 2.1.6 as new 2.1.3 through 2.1.7 and add new 2.1.2 as follows:]

2.1.2 APO/FPO Priority Mail Large Flat-Rate Box

A USPS-produced APO/FPO Priority Mail large flat-rate box sent to an APO/FPO destination address, regardless of the actual weight of the piece, is charged $10.95. Items to an APO/FPO address may be shipped in a special version of the box identified with the additional logo: ''Americasupportsyou.mil.'' If the special version of the APO/FPO flat-rate box is used for non-APO/FPO addresses, the domestic or international large flat-rate box prices will apply. Articles mailed to an APO/FPO address in one of the regular flat-rate boxes (FRB–1 or FRB–2) are charged $8.95. Only USPS-produced flat-rate boxes are eligible for the flat-rate box prices.

* * * * *

Neva R. Watson,

Attorney, Legislative.

[FR Doc. E8–1780 Filed 1–31–08; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 97

[EPA–R05–OAR–2007–0390; FRL–8519–6]

Approval and Promulgation of Air Quality Implementation Plans; Ohio; Clean Air Interstate Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action approves a revision to the Ohio State Implementation Plan (SIP) submitted on April 17, 2007, and revised on September 26, 2007. This SIP revision incorporates provisions related to the implementation of EPA's Clean Air Interstate Rule (CAIR), promulgated on May 12, 2005, and revised on April 28, 2006, and December 13, 2006, and the CAIR Federal Implementation Plan (CAIR SIP) concerning sulphur dioxide (SO_2), oxides of nitrogen (NO_X) annual and NO_X ozone season emissions for the State of Ohio, promulgated on April 28, 2006, and revised on December 13, 2006. EPA is not making any changes to the CAIR FIP but is amending, to the extent EPA approves Ohio's SIP revision, the appropriate appendices in the CAIR FIP trading rules simply to note that approval.

The Ohio SIP revision that was submitted on April 17, 2007, was a full CAIR SIP revision. In a letter submitted on September 26, 2007, Ohio requested that EPA consider the September 26, 2007, submittal as two separate submittals, i.e., as a full CAIR SIP and as an abbreviated CAIR SIP. Ohio requested that EPA act on specific portions of the September 26, 2007, submittal as an abbreviated CAIR SIP. EPA approves Ohio's abbreviated SIP revision that addresses the methodology used to allocate annual and ozone season NO_X allowances to affected electric generating units (EGUs), and the opt-in provisions, under the CAIR trading programs and the CAIR SIP.

This action also contains EPA's response to a comment from the State of Connecticut following publication of the original direct final approval of the Ohio plan on October 16, 2007. We withdrew the original direct final rule on December 5, 2007, because of receipt of this comment. For reasons expressed in the body of this rule, EPA believes the comment from Connecticut is not relevant to this final action and, therefore, we are moving forward to approve the Ohio plan. As such, EPA will populate the compliance accounts of units affected by the State's rule shortly after the effective date of this rule.

DATES: This final rule is effective on February 1, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2007–0390. 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,

i.e., 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 electronically through *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you contact the person listed below before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: John Paskevicz, Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6084. E-mail at *paskevicz.john@epa.gov*.

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

Table of Contents

I. What Action Is EPA Taking?
II. What Is the Regulatory History of CAIR and the CAIR FIPs?
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V. Analysis of Ohio's CAIR SIP Submittal
A. State Budgets for Allowance Allocations
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C. Applicability Provisions for non-EGUs NO_X SIP Call Sources
D. NO_X Allowance Allocations
E. Allocation of NO_X Allowances From the Compliance Supplement Pool
F. Individual Opt-in Units
VI. Public Comment
VII. Final Action
VIII. Statutory and Executive Order Reviews

I. What Action Is EPA Taking?

CAIR SIP Approval

EPA is approving a revision to Ohio's SIP, submitted on September 26, 2007, that modifies the application of certain provisions of the CAIR FIP concerning SO_2, NO_X annual, and NO_X ozone season emissions. (As discussed below, this less comprehensive CAIR SIP is termed an abbreviated SIP.) Ohio is subject to the CAIR FIPs that implement the CAIR requirements by requiring certain EGUs to participate in the EPA-administered Federal CAIR SO_2, NO_X annual, and NO_X ozone season cap-and-trade programs. The SIP revision provides a methodology for allocating NO_X allowances for the NO_X annual and NO_X ozone season trading programs. The CAIR FIPs provide that this methodology will be used to allocate NO_X allowances to sources in Ohio, instead of the Federal allocation methodology otherwise provided in the FIP. The SIP revision provides a methodology for allocating the compliance supplement pool in the CAIR NO_X annual trading program. The SIP also allows for individual units not otherwise subject to the CAIR trading programs to opt into such trading programs in accordance with opt-in provisions of the CAIR FIP. Consistent with the flexibility provided in the FIPs, these provisions will be used to replace or supplement, as appropriate, the corresponding provisions in the CAIR FIPs for Ohio. EPA is not making any changes to the CAIR FIP, but is amending to the extent EPA approves Ohio's SIP revision, the appropriate appendices in the CAIR FIP trading rules simply to note that approval.

II. What Is the Regulatory History of the CAIR and the CAIR FIPs?

The CAIR was published by EPA on May 12, 2005 (70 FR 25162). In this rule, EPA determined that 28 States and the District of Columbia contribute significantly to nonattainment and interfere with maintenance of the national ambient air quality standards (NAAQS) for fine particles ($PM_{2.5}$) and/or 8-hour ozone in downwind States in the eastern part of the country. As a result, EPA required those upwind States to revise their SIPs to include control measures that reduce emissions of SO_2, which is a precursor to $PM_{2.5}$ formation, and/or NO_X, which is a precursor to both ozone and $PM_{2.5}$ formation. For jurisdictions that contribute significantly to downwind $PM_{2.5}$ nonattainment, CAIR sets annual State-wide emission reduction requirements (*i.e.*, budgets) for SO_2 and annual State-wide emission reduction requirements for NO_X. Similarly, for jurisdictions that contribute significantly to 8-hour ozone nonattainment, CAIR sets State-wide emission reduction requirements for NO_X for the ozone season (May 1st to September 30th). Under CAIR, States may implement these emission budgets by participating in the EPA-administered cap-and-trade programs or by adopting any other control measures.

CAIR explains to subject States what must be included in SIPs to address the requirements of section 110(a)(2)(D) of the Clean Air Act (CAA) with regard to interstate transport with respect to the 8-hour ozone and $PM_{2.5}$ NAAQS. EPA made national findings, effective May 25, 2005, that the States had failed to submit SIPs meeting the requirements of section 110(a)(2)(D). The SIPs were due in July 2000, 3 years after the promulgation of the 8-hour ozone and $PM_{2.5}$ NAAQS. These findings started a 2-year clock for EPA to promulgate a Federal Implementation Plan (FIP) to address the requirements of section 110(a)(2)(D). Under CAA section 110(c)(1), EPA may issue a FIP anytime after such findings are made and must do so within two years unless a SIP revision correcting the deficiency is approved by EPA before the FIP is promulgated.

On April 28, 2006, EPA promulgated FIPs for all States covered by CAIR in order to ensure the emissions reductions required by CAIR are achieved on schedule. Each CAIR State is subject to the FIPs until the State fully adopts, and EPA approves, a SIP revision meeting the requirements of CAIR. The CAIR FIPs require certain EGUs to participate in the EPA-administered CAIR SO_2, NO_X annual, and NO_X ozone-season model trading programs, as appropriate. The CAIR FIP SO_2, NO_X annual, and NO_X ozone season trading programs impose essentially the same requirements as, and are integrated with, the respective CAIR SIP trading programs. The integration of the CAIR FIP and SIP trading programs means that these trading programs will work together to create effectively a single trading program for each regulated pollutant (SO_2, NO_X annual, and NO_X ozone season) in all States covered by CAIR FIP or SIP trading program for that pollutant. The CAIR FIPs also allow States to submit abbreviated SIP revisions that, if approved by EPA, will automatically replace or supplement the corresponding CAIR FIP provisions (e.g., the methodology for allocating NO_X allowances to sources in the state), while the CAIR FIP remains in place for all other provisions.

On April 28, 2006, EPA published two more CAIR-related final rules that added the States of Delaware and New Jersey to the list of States subject to CAIR for $PM_{2.5}$ and announced EPA's final decisions on reconsideration of five issues without making any substantive changes to the CAIR requirements.

III. What Are the General Requirements of CAIR and the CAIR FIPs?

CAIR establishes State-wide emission budgets for SO_2 and NO_X and is to be implemented in two phases. The first phase of NO_X reductions starts in 2009 and continues through 2014, while the first phase of SO_2 reductions starts in 2010 and continues through 2014. The

second phase of reductions for both NO_X and SO_2 starts in 2015 and continues thereafter. CAIR requires States to implement the budgets by either requiring EGUs to participate in the EPA-administered cap-and-trade programs or adopting other control measures of the State's choosing and demonstrating that such control measures will result in compliance with the applicable State SO_2 and NO_X budgets.

The May 12, 2005, and April 28, 2006, CAIR rules provide model rules that States must adopt (with certain limited changes, if desired) if they want to participate in the EPA-administered trading programs. With two exceptions, only States that choose to meet the requirements of CAIR through methods that exclusively regulate EGUs are allowed to participate in the EPA-administered trading programs. One exception is for States that adopt the opt-in provisions of the model rules to allow non-EGUs individually to opt into the EPA-administered trading programs. The other exception is for States that include all non-EGUs from their NO_X SIP Call trading programs in their CAIR NO_X ozone season trading programs.

IV. What Are the Types of CAIR SIP Submittals?

States have the flexibility to choose the type of control measures they will use to meet the requirements of CAIR. EPA anticipates that most States will choose to meet the CAIR requirements by selecting an option that requires EGUs to participate in the EPA-administered CAIR cap-and-trade programs. For such States, EPA has provided two approaches for submitting and obtaining approval for CAIR SIP revisions. States may submit full SIP revisions that adopt the model CAIR cap-and-trade rules. If approved, these SIP revisions will fully replace the CAIR FIPs. Alternatively, States may submit abbreviated SIP revisions. These SIP revisions will not replace the CAIR FIPs; however, the CAIR FIPs provide that, when approved, the provisions in these abbreviated SIP revisions will be used instead of or in conjunction with, as appropriate, the corresponding provisions of the CAIR FIPs (e.g., the NO_X allowance allocation methodology).

A State submitting an abbreviated SIP revision, may submit limited SIP revisions to tailor the CAIR FIP cap-and-trade programs to the state submitting the revision. Specifically, an abbreviated SIP revision may establish certain applicability and allowance allocation provisions that, the CAIR FIPs provide, will be used instead of or in conjunction with the corresponding provisions in the CAIR FIP rules in that State. Specifically, the abbreviated SIP revisions may:

1. Include NO_X SIP Call trading sources that are not EGUs under CAIR in the CAIR FIP NO_X ozone season trading program;

2. Provide for allocation of NO_X annual or ozone season allowances by the State, rather than the Administrator, and using a methodology chosen by the State;

3. Provide for allocation of NO_X annual allowances from the CSP by the State, rather than by the Administrator, and using the State's choice of allowed, alternative methodologies; and/or

4. Allow units that are not otherwise CAIR units to opt individually into the CAIR FIP cap-and-trade programs under the opt-in provisions in the CAIR FIP rules.

With approval of an abbreviated SIP revision, the CAIR FIP remains in place, as tailored to sources in the State by that approved SIP revision. Abbreviated SIP revisions can be submitted in lieu of, or as part of, CAIR full SIP revisions. States may want to designate part of their full SIP as an abbreviated SIP for EPA to act on first when the timing of the State's submission might not provide EPA with sufficient time to approve the full SIP prior to the deadline for recording NO_X allocations. This will help ensure that the elements of the trading programs where flexibility is allowed are implemented according to the State's decisions. Submission of an abbreviated SIP revision does not preclude future submission of a CAIR full SIP revision. In this case, the September 26, 2007, submittal from Ohio has been submitted as an abbreviated SIP revision. As discussed below, Ohio requested three of the four provisions for which a State may request an abbreviated SIP. The State requested that its allocation of NO_X annual and NO_X ozone season allowances for EGUs under the FIP be used instead of the corresponding provisions of the CAIR FIPs in effect in the State. The State requested that its allocation by the State of NO_X annual allowances from the CSP be used instead of the corresponding provisions of the CAIR FIPs in effect in the State. Finally, the State also provided that units that are not otherwise CAIR units may opt individually into the CAIR FIP cap-and-trade program under the opt-in provisions in the CAIR FIP rules.

V. Analysis of Ohio's CAIR SIP Submittal

A. State Budgets for Allowance Allocations

The CAIR NO_X annual and ozone season budgets were developed from historical heat input data for EGUs. Using these data, EPA calculated annual and ozone season regional heat input values, which were multiplied by 0.15 lb/mmBtu, for phase 1, and 0.125 lb/mmBtu, for phase 2, to obtain regional NO_X budgets for 2009–2014 and for 2015 and thereafter, respectively. EPA derived the State NO_X annual and ozone season budgets from the regional budgets using State heat input data adjusted by fuel factors.

The CAIR State SO_2 budgets were derived by discounting the tonnage of emissions authorized by annual allowance allocations under the Acid Rain Program under title IV of the CAA. Under CAIR, each allowance allocated under the Acid Rain Program for the years in phase 1 of CAIR (2010 through 2014) authorizes 0.5 ton of SO_2 emissions in the CAIR trading program, and each Acid Rain Program allowance allocated for the years in phase 2 of CAIR (2015 and thereafter) authorizes 0.35 ton of SO_2 emissions in the CAIR trading program.

The CAIR FIPs established the budgets for Ohio as 108,667 tons for NO_X annual emissions, 45,664 tons for NO_X ozone season emissions, and 333,520 tons for SO_2 emissions. Ohio's SIP revision, approved in today's action, does not affect these budgets, which are total amounts of allowances available for allocation for each year under the EPA-administered cap-and-trade programs under the CAIR FIPs. In short, the abbreviated SIP revision only affects allocations of allowances under the established budgets.

B. CAIR Cap-and-Trade Programs

The CAIR NO_X annual and ozone-season FIPs both largely mirror the structure of the NO_X SIP Call model trading rule in 40 CFR part 96, subparts A through I. While the provisions of the NO_X annual and ozone-season FIPs are similar, there are some differences. For example, the NO_X annual FIP (but not the NO_X ozone season FIP) provides for a CSP, which is discussed below and under which allowances may be awarded for early reductions of NO_X annual emissions. As a further example, the NO_X ozone season FIP reflects the fact that the CAIR NO_X ozone season trading program replaces the NO_X SIP Call trading program after the 2008 ozone season and is coordinated with the NO_X SIP Call program. The NO_X

ozone season FIP provides incentives for early emissions reductions by allowing banked, pre-2009 NO_X SIP Call allowances to be used for compliance in the CAIR NO_X ozone-season trading program. In addition, States have the option of continuing to meet their NO_X SIP Call requirement by participating in the CAIR NO_X ozone season trading program and including all of their NO_X SIP Call trading sources in that program.

The provisions of the CAIR SO_2 FIP are also similar to the provisions of the NO_X annual and ozone season FIPs. However, the SO_2 FIP is coordinated with the ongoing Acid Rain SO_2 cap-and-trade program under CAA title IV. The SO_2 FIP uses the title IV allowances for compliance, with each allowance allocated for 2010–2014 authorizing only 0.50 ton of emissions and each allowance allocated for 2015 and thereafter authorizing only 0.35 ton of emissions. Banked title IV allowances allocated for years before 2010 can be used at any time in the CAIR SO_2 cap-and-trade program, with each such allowance authorizing 1 ton of emissions. Title IV allowances are to be freely transferable among sources covered by the Acid Rain Program and sources covered by the CAIR SO_2 cap-and-trade program.

EPA used the CAIR model trading rules as the basis for the trading programs in the CAIR FIPs. The CAIR FIP trading rules are virtually identical to the CAIR model trading rules, with changes made to account for Federal rather than state implementation. The CAIR model SO_2, NO_X annual, and NO_X ozone season trading rules and the respective CAIR FIP trading rules are designed to work together as integrated SO_2, NO_X annual, and NO_X ozone season trading programs.

Ohio is subject to the CAIR FIPs concerning SO_2, NO_X annual, and NO_X ozone season emissions, and the CAIR FIP trading programs for SO_2, NO_X annual, and NO_X ozone season apply to sources in Ohio. Consistent with the flexibility they give to States, the CAIR FIPs provide that States may submit abbreviated SIP revisions that will replace or supplement, as appropriate, certain provisions of the CAIR FIP trading programs. The Ohio EPA September 26, 2007, submission is such an abbreviated SIP revision.

C. Applicability Provisions for non-EGUs NO_X SIP Call Sources

In general, the CAIR FIP trading programs apply to any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990, or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

States have the option of bringing in, for the CAIR NO_X ozone season program only, those units in the State's NO_X SIP Call trading program that are not EGUs as defined under CAIR. EPA advises States exercising this option to use provisions for applicability that are substantively identical to the provisions in 40 CFR 96.304 and add the applicability provisions in the State's NO_X SIP Call trading rule for non-EGUs to the applicability provisions in 40 CFR 96.304 in order to include in the CAIR NO_X ozone season trading program all units required to be in the State's NO_X SIP Call trading program that are not already included under 40 CFR 96.304. Under this option, the CAIR NO_X ozone season program must cover all large industrial boilers and combustion turbines, as well as any small EGUs (i.e. units serving a generator with a nameplate capacity of 25 MWe or less), that the State currently requires to be in the NO_X SIP Call trading program.

Consistent with the flexibility given to States in the CAIR FIP, Ohio has not chosen, in the abbreviated CAIR SIP approved here, to expand the applicability provisions of the CAIR NO_X ozone season trading program to include all non-EGUs in the State's NO_X SIP Call trading program. However, EPA notes that Ohio has indicated that the full SIP revision submitted on September 26, 2007, expands the applicability provisions of CAIR NO_X ozone season trading program in this manner. As such, EPA is not taking final action on the non-EGU portion of the State's September 26, 2007, full CAIR SIP revision. The full CAIR SIP revision including actions to approve the non-EGU portions of the State's CAIR rule will be the subject of a separate future action.

D. NO_X Allowance Allocations

Under the NO_X allowance allocation methodology in the CAIR model trading rules and in the CAIR FIP, NO_X annual and ozone season allowances are allocated to units that have operated for five years, based on heat input data from a three-year period that are adjusted for fuel type by using fuel factors of 1.0 for coal, 0.6 for oil, and 0.4 for other fuels. The CAIR model trading rules and the CAIR FIP also provide a new unit set-aside from which units without five years of operation are allocated allowances based on the units' prior year emissions.

The CAIR FIP provides States the flexibility to establish a different NO_X allowance allocation methodology that will be used to allocate allowances to sources in the States if certain requirements are met concerning the timing of submission of units' allocations to the Administrator for recordation and the total amount of allowances allocated for each control period. In adopting alternative NO_X allowance allocation methodologies, States have flexibility with regard to:

1. The cost to recipients of the allowances, which may be distributed for free or auctioned;
2. The frequency of allocations;
3. The basis for allocating allowances, which may be distributed, for example, based on historical heat input or electric and thermal output; and
4. The use of allowance set-asides and, if used, the size of the set-aside.

Consistent with the flexibility given to States in the CAIR FIPs, Ohio has chosen to replace the provisions of the CAIR NO_X annual FIP concerning the allocation of NO_X annual allowances with its own methodology. Ohio has chosen to distribute NO_X annual allowances based upon heat input data from a three year period adjusted for fuel type by using fuel adjustment factors of 1.0 for coal, 0.6 for oil, and 0.4 for other fuels. Based on this methodology, Ohio determined NO_X allocations for EGUs in the State under the CAIR FIP, and submitted its allocations to EPA on April 24, 2007.

Ohio also has included, in the abbreviated SIP revision, provisions regarding set-aside programs for energy efficiency/renewable energy and innovative technology projects under the CAIR NO_X Ozone Season program. The State's energy-efficiency/renewable energy (EE/RE) and innovative technology set-aside program provisions establish two set-asides for each control period—one set-aside for EE/RE projects and one set-aside for innovative technology projects—and specify procedures for allocating the allowances in the set-asides. Each set-aside is limited to one percent of the state trading budget for NO_X ozone season allowance allocations. Beginning with the end of 2009 and every three years thereafter, Ohio EPA will review the number of allowances allocated from the set-asides and will, under certain circumstances, increase the size of each set-aside in future years as necessary, up to a maximum of five percent of the state trading budget.

EPA notes that the set-aside provisions do not explicitly state how allowances will be reserved in the set-asides if the total amount of allowances requested from a set-aside exceeds the total amount of allowances in that set-aside. However, set-aside provisions

explicitly limit the amount of allowances available from each set-aside to one percent of the state trading budget unless Ohio EPA expands the set-asides in future years. In addition, Ohio informed EPA, in the September 26, 2007, letter, that its guidance for the set-asides provides that set-aside allowances will be reserved on a pro-rata basis if the total requested allowances exceed the size of the set-aside. Ohio has indicated that it will clarify its set-aside provisions consistent with this guidance.

The set-aside provisions also do not explicitly state how a set-aside will be increased up to five percent of the state trading budget if the existing set-aside amounts plus the total amounts allocated to units with and without baseline heat input under Ohio's other allocation provisions for NO_X ozone season allowances already equal the state trading budget. However, Ohio's CAIR NO_X ozone season allocation provisions clearly limit the total allocations for each control period of CAIR NO_X ozone season allowances to the amount of the state trading budget for that control period. Further, as written, the provisions for expanding the set-asides cannot have any effect on the current allocations, which Ohio has already submitted to the Administrator for phase 1 of the trading program. In addition, Ohio informed EPA, in the September 28, 2007 letter, that Ohio EPA will reduce the total amount of allowances allocated to existing units under the other allocation provisions to the extent the size of a set-aside is increased in the future. Ohio has indicated that it will clarify its allocation provisions consistent with this statement in the September 28, 2007, letter.

Consequently, EPA interprets Ohio's abbreviated SIP to limit, consistent with the requirements of 40 CFR 51.123(ee)(2)(ii)(B), the total allocations for each control period of CAIR NO_X ozone season allowances—whether from current or expanded set-asides or under the other allocation provisions in the abbreviated SIP—to the state trading budget.

E. Allocation of NO_X Allowances From the Compliance Supplement Pool

The CSP provides an incentive for early reductions in NO_X annual emissions. The CSP consists of 200,000 CAIR NO_X annual allowances of vintage 2009 for the entire CAIR region, and a State's share of the CSP is based upon the State's share of the projected emission reductions under CAIR. States may distribute CSP allowances, one allowance for each ton of early reduction, to sources that make NO_X reductions during 2007 or 2008 beyond what is required by any applicable State or Federal emission limitation. States also may distribute CSP allowances based upon a demonstration of need for an extension of the 2009 deadline for implementing emission controls.

The CAIR NO_X annual FIP establishes specific methodologies for allocations of CSP allowances. States may choose an allowed, alternative CSP allocation methodology to be used to allocate CSP allowances to sources in those States.

Consistent with the flexibility given to States in the FIP, Ohio has chosen to modify the provisions of the CAIR NO_X annual FIP concerning the allocation of allowances from the CSP. Ohio has chosen to distribute CSP allowances using an allocation methodology that provides more certainty to unit owners and operators that a known quantity of allowances per unit will be available for distribution at the beginning of the control period. Ohio also provides owners and operators with an incentive for the operation of expensive post-combustion control equipment year-round and provides incentives for early reductions in emissions before 2009. Ohio EPA is required to submit allocations from the CSP to the Administrator by July 1, 2009, or such time when unit's 2008 emissions data are available so that the allocations can be determined. Ohio's abbreviated SIP also states that the Administrator will record the allocations by January 1, 2010. While Ohio's abbreviated SIP does not explicitly state that allocations will be submitted to the Administrator by November 30, 2009, EPA notes that units' 2008 emissions data should certainly be available before that date and that the allocations need to be submitted by that date in order to ensure that the Administrator will complete recordation of allowances by January 1, 2010. Further, Ohio has indicated, in the September 26, 2007, letter, that it will clarify its CSP provisions to provide for a November 30, 2009, deadline for submission of CSP allocations to the Administrator. Consequently, EPA considers the Ohio abbreviated SIP to meet the requirements of 40 CFR 51.123(p)(2).

F. Individual Opt-in Units

The opt-in provisions allow for certain non-EGUs (i.e., boilers, combustion turbines, and other stationary fossil-fuel-fired devices) that do not meet the applicability criteria for a CAIR trading program to participate voluntarily in (i.e., opt into) the CAIR trading program. A non-EGU may opt into one or more of the CAIR trading programs. In order to qualify to opt into a CAIR trading program, a unit must vent all emissions through a stack and be able to meet monitoring, recordkeeping, and recording requirements of 40 CFR part 75. The owners and operators seeking to opt a unit into a CAIR trading program must apply for a CAIR opt-in permit. If the unit is issued a CAIR opt-in permit, the unit becomes a CAIR unit, is allocated allowances, and must meet the same allowance-holding and emissions monitoring and reporting requirements as other units subject to the CAIR trading program. The opt-in provisions provide for two methodologies for allocating allowances for opt-in units, one methodology that applies to opt-in units in general and a second methodology that allocates allowances only to opt-in units that the owners and operators intend to re-power before January 1, 2015.

States have several options concerning the opt-in provisions. The rules for each of the CAIR FIP trading programs include opt-in provisions that are essentially the same as those in the respective CAIR SIP model rules, except that the CAIR FIP opt-in provisions become effective in a State only if the State's abbreviated SIP revision adopts the opt-in provisions. The State may adopt the opt-in provisions entirely or may adopt them but exclude one of the allowance allocation methodologies. The State also has the option of not adopting any opt-in provisions in the abbreviated SIP revision and thereby providing for the CAIR FIP trading program to be implemented in the State without the ability for units to opt into the program.

Consistent with the flexibility given to States in the FIPs, Ohio has chosen to allow non-EGUs meeting certain requirements to participate in the CAIR NO_X annual trading program, the CAIR NO_X ozone season trading program and the CAIR SO_2 trading program. Ohio EPA submitted the CAIR SIP program rules, OAC 3745–109–08 and OAC 3745–109–14 and OAC 3745–109–21, which incorporate the opt-in provisions as provided in the final EPA CAIR rule of April 28, 2006. These rules address opt-ins for NO_X ozone season, NO_X annual, and SO_2 annual programs.

VI. Public Comments

Comment: On November 9, 2007, the Connecticut Department of Environmental Protection (CTDEP) submitted comments on EPA's direct final rule (DFR) notice approving Ohio's abbreviated CAIR SIP. CTDEP encourages EPA to approve the state's CAIR program adopted to meet the

emission reduction requirements of CAIR. However, it argues that before approving state plans, EPA should evaluate individually and in the aggregate each state's clean air programs. CTDEP argues that such evaluation is necessary to ensure that each state's emissions do not significantly contribute to ozone nonattainment in Connecticut. CTDEP asserts its belief that the CAIR program does not ensure that the CAA section 110(a)(2)(D)(i) requirements to prohibit transported emissions that significantly contribute to nonattainment in Connecticut and other states will be met. CTDEP expresses concern that EPA is determining through this and other similar rulemakings that CAIR programs are sufficient to meet States' section 110(a)(2)(D)(i) obligations. CTDEP asserts, based on EPA and State modeling for CAIR, that the levels of transported pollution remaining after CAIR implementation are large enough that, even with local controls, it may be difficult for Connecticut to attain the 8-hour ozone NAAQS by 2010. Finally, CTDEP questions EPA's determination that highly cost effective controls are adequate to address States' section 110(a)(2)(D)(i) obligations as compared to ''reasonable cost'' controls that could be achieved to effect more stringent NO_X reductions.

Response: EPA does not agree that it is appropriate or necessary for EPA to conduct additional analysis before approving the Ohio abbreviated CAIR SIP for NO_X allowances and NO_X allowance methodology. Ohio has chosen an abbreviated SIP for NO_X allowances and NO_X allocation methodology, one of four SIP elements for which states may request an abbreviated SIP. With an abbreviated SIP, the CAIR FIP remains in place for Ohio. EPA's proposed approval of Ohio's abbreviated SIP would therefore only have the effect of replacing, as provided for in the CAIR FIP, the corresponding FIP provisions with the State's preferred allocations and methodology. EPA has evaluated this abbreviated SIP revision and determined that it complies with the requirements of the CAIR FIP provisions regarding abbreviated SIPs. CTDEP does not challenge this determination. Thus, CTDEP's comments do not specifically pertain to any aspect of EPA's proposed specific action to approve the Ohio CAIR SIP revision. Rather, the comments appear to be directed broadly at EPA's decisions with regard to States' section 110(a)(2)(D)(i) obligations. These decisions were made by EPA in the context of the CAIR rulemaking, which was promulgated on May 12, 2005 (70 FR 25162), not in the EPA action to approve Ohio's abbreviated CAIR SIP revision. Therefore, CTDEP's comments are not relevant to this final action. CTDEP had ample opportunity to submit comments both during the comment period for the proposed CAIR rulemaking of January 30, 2004 (69 FR 4566), and during the comment period for the proposed CAIR FIP of August 24, 2005 (70 FR 49708). EPA's action to approve Ohio's abbreviated CAIR SIP did not reopen either the CAIR or CAIR FIP rulemakings. Consequently, CTDEP's comments are not relevant to this rulemaking, or timely with respect to the CAIR and CAIR FIP rulemakings. Thus, EPA does not believe it is necessary to conduct additional analysis on whether Ohio or any other state satisfies the requirements of 110(a)(2)(D) before approving the Ohio abbreviated CAIR SIP submission.

VII. Final Action

EPA is promulgating the rules contained in Ohio's abbreviated CAIR SIP revision submitted on September 26, 2007. Ohio is covered by the CAIR FIPs, which require participation in the EPA-administered CAIR FIP cap-and-trade programs for SO_2, NO_X annual, and NO_X ozone season emissions. Under this abbreviated SIP revision, and consistent with the flexibility given to States in the FIPs, Ohio adopts provisions for allocating allowances under the CAIR FIP NO_X annual and ozone season trading programs. In addition, Ohio adopts in the abbreviated SIP revision provisions that establish a methodology for allocating allowances in the CSP and allow for individual non-EGUs to opt into the CAIR FIP SO_2, NO_X annual, NO_X ozone season cap-and-trade programs. As provided for in the CAIR FIPs, these provisions in the abbreviated SIP revision will replace or supplement the corresponding provisions of the CAIR FIPs in Ohio. The abbreviated SIP revision meets the applicable requirements in 40 CFR 51.123(p) and (ee), with regard to NO_X annual and NO_X ozone season emissions, and 40 CFR 51.124(r), with regard to SO_2 emissions. EPA is not making any changes to the CAIR FIP, but is amending the appropriate appendices in the CAIR FIP trading rules simply to note that approval.

In accordance with 5 U.S.C 553(d), EPA finds that there is good cause for these actions to become effective immediately upon publication. Ordinarily, a delay in the effective date is provided to give affected sources more time to plan for meeting applicable requirements. In this case, the various requirements under Ohio's rule take effect at fixed times, and an immediate effective date (and nearly immediate issuance of allowances under Ohio's allocation rules) will provide sources more time to plan for meeting the rules' requirements. Thus, an immediate effective date better serves the purposes of 5 U.S.C. 553 than would a delayed effective date. An immediate effective date will provide positive impact from the final rule on sources which can utilize the allowances methodology under the State's rule. EPA concluded that the Connecticut comment did not oppose approval of Ohio's rule and was not intended to delay implementation of the Ohio CAIR program. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule ''* * * grants or recognizes an exemption or relieves a restriction,'' and section 553(d)(3)e which allows an effective date less than 30 days after publication ''* * * as otherwise provided by the agency for good cause found and published with the rule.'' The purpose of the 30-day waiting period prescribed in 553(d) is to give the affected parties a reasonable time to adjust their planning actions as the final rule takes effect. Today's rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today's ''immediate effective'' action provides sufficient time for affected sources to plan the use of allowances under the State rule through the implementation of the Ohio abbreviated CAIR implementation plan.

VIII. 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 would impose no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action approves pre-existing

requirements under state law and would 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 would 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 would 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 to amend the appropriate appendices in the CAIR FIP trading rules to note that approval. It 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 would approve 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 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 would 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 1, 2008. 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

40 CFR Part 52

Environmental protection, Air pollution control, Electric utilities, Incorporate by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

40 CFR Part 97

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

Dated: January 11, 2008.

Gary Gulezian,

Acting Regional Administrator, Region 5.

■ For the reasons set forth in the preamble, parts 52 and 97 of chapter 1 of title 40 of the Code of Federal Regulations are amended as follows:

PART 52—[AMENDED]

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

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

Subpart KK—Ohio

■ 2. Section 52.1870 is amended by adding paragraph (c)(140) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(140) Ohio Environmental Protection Agency submitted amendments on September 26, 2007, to the State Implementation Plan to control emissions from electric generating units (EGU). Rules affecting these units include: Ohio Administrative Code (OAC) 3745–109–01 (B)(59) and (72), 3745–109–04, 3745–109–08, 3745–109–14, 3745–109–17 (except the following: the language in paragraph (A) referencing the state trading budget for non-EGUs in 3745–109–17–01(C)(4), paragraphs (C)(1)(a)(i)(*d*), (C)(2)(b), (C)(2)(d), (C)(2)(e), and (C)(2)(f), and the language in paragraph (C)(3)(a) referencing non-EGUs), and 3745–109–21.

(i) *Incorporation by reference.* The following sections of the Ohio Administrative Code (OAC) are incorporated by reference.

(A) OAC 3745–109–01(B)(59) ''Energy efficiency/renewable energy project''; OAC 3745–109–01(B)(72) ''Innovative technology project''; OAC 3745–109–04 ''CAIR NO_X allowance allocations''; OAC 3745–109–08 ''CAIR NO_X opt-in units''; OAC 3745–109–14 ''CAIR SO_2 opt-in units''; and OAC 3745–109–21 ''CAIR NO_X ozone season opt-in units''; effective on September 27, 2007.

(B) OAC 3745–109–17 ''CAIR NO_X ozone season allowance allocations''; effective on September 27, 2007, except the following: the language in paragraph (A) referencing the state trading budget for non-EGUs in 3745–109–17–01(C)(4), paragraphs (C)(1)(a)(i)(*d*), (C)(2)(b), (C)(2)(d), (C)(2)(e), and (C)(2)(f), and the language in paragraph (C)(3)(a) referencing non-EGUs.

PART 97—[AMENDED]

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

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

■ 4. Appendix A to subpart EE is amended by adding in alphabetical order the entry ''Ohio'' under paragraphs 1. and 2. to read as follows:

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

1. * * *

Ohio

* * * * *

2. * * *

Ohio

* * * * *

■ 5. Appendix A to subpart II is amended by adding in alphabetical

order the entry ''Ohio'' under paragraphs 1. and 2. to read as follows:

Appendix A to Subpart II of Part 97—States With Approved State Implementation Plan Revisions Concerning CAIR NO_X Opt-In Units

1. * * *
Ohio

* * * * *

2. * * *
Ohio

* * * * *

■ 6. Appendix A to subpart III of part 97 is amended by adding in alphabetical order the entry ''Ohio'' under paragraphs 1. and 2. to read as follows:

Appendix A to Subpart III of Part 97—States With Approved State Implementation Plan Revisions Concerning CAIR SO_2 Opt-In Units

1. * * *
Ohio

* * * * *

2. * * *
Ohio

* * * * *

■ 7. Appendix A to subpart EEEE of part 97 is amended by adding in alphabetical order the entry ''Ohio'' to read as follows:

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

* * * * *

Ohio

* * * * *

■ 8. Appendix A to subpart IV of part 97 is amended by adding in alphabetical order the entry ''Ohio'' under paragraphs 1. and 2. to read as follows:

Appendix A to Subpart IV of Part 97—States With Approved State Implementation Plan Revisions Concerning CAIR NO_X Ozone Season Opt-In Units

1. * * *
Ohio

2. * * *
Ohio

* * * * *

[FR Doc. E8–1804 Filed 1–31–08; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 02–278; FCC 07–232]

Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991

AGENCY: Federal Communications Commission.

ACTION: Clarification.

SUMMARY: In this document, the Commission addresses a Petition for Expedited Clarification and Declaratory Ruling filed by ACA International (ACA). Specifically, the Commission clarifies that autodialed and prerecorded message calls to wireless numbers that are provided by the called party to a creditor in connection with an existing debt are permissible as calls made with the ''prior express consent'' of the called party.

DATES: Effective February 1, 2008.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Erica McMahon, Consumer & Governmental Affairs Bureau at (202) 418–0346 (voice), or e-mail *Erica.McMahon@fcc.gov.*

SUPPLEMENTARY INFORMATION: On October 4, 2005, ACA filed a petition for expedited clarification and declaratory ruling against the Commission's *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991,* Report and Order, FCC 03–153, published at 68 FR 44144 (July 25, 2003). This is a summary of the Commission's document, FCC 07–232, adopted December 28, 2007, released January 4, 2008, addressing a Petition for Expedited Clarification and Declaratory Ruling filed by ACA International (ACA).

Copies of document FCC 07–232 and any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Document FCC 07–232 and any subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact the Commission's duplicating contractor at their Web site: *www.bcpiweb.com* or call 1–800–378–3160. 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) or (202) 418–0432 (TTY). Document FCC 07–232 can also be downloaded in Word and Portable Document Format (PDF) at: *http://www.fcc.gov/cgb/policy.*

Paperwork Reduction Act of 1995 Analysis

Document FCC 07–232 does not contain new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198. *See* 47 U.S.C. 3506(c)(4).

Synopsis

On October 4, 2005, ACA filed a petition seeking clarification that the prohibition against autodialed or prerecorded calls to wireless telephone numbers in 47 CFR 64.1200(a)(1)(iii) of the Commission's rules does not apply to creditors and collectors when calling wireless telephone numbers to recover payments for goods and services received by consumers.

Although the TCPA generally prohibits autodialed calls to wireless phones, it also provides an exception for autodialed and prerecorded message calls for emergency purposes or made with the prior express consent of the called party. Because the Commission finds that autodialed and prerecorded message calls to wireless numbers provided by the called party in connection with an existing debt are made with the ''prior express consent'' of the called party, the Commission clarifies that such calls are permissible. The Commission concludes that the provision of a cell phone number to a creditor, e.g., as part of a credit application, reasonably evidences prior express consent by the cell phone subscriber to be contacted at that number regarding the debt. In the *1992 TCPA Order* (FCC 92–443) published at 57 FR 48333 (October 23, 1992), the Commission determined that ''persons who knowingly release their phone numbers have in effect given their invitation or permission to be called at the number which they have given, absent instructions to the contrary.'' The legislative history in the TCPA provides support for this interpretation. Specifically, the House report on what

ultimately became section 227 of the Communications Act states that: ''[t]he restriction on calls to emergency lines, pagers, and the like does not apply when the called party has provided the telephone number of such a line to the caller for use in normal business communications.''

The Commission emphasizes that prior express consent is deemed to be granted only if the wireless number was provided by the consumer to the creditor, and that such number was provided during the transaction that resulted in the debt owed. To ensure that creditors and debt collectors call only those consumers who have consented to receive autodialed and prerecorded message calls, the Commission concludes that the creditor should be responsible for demonstrating that the consumer provided prior express consent. The creditors are in the best position to have records kept in the usual course of business showing such consent, such as purchase agreements, sales slips, and credit applications. The Commission encourages creditors to include language on credit applications and other documents informing the consumer that, by providing a wireless telephone number, the consumer consents to receiving autodialed and prerecorded message calls from the creditor or its third party debt collector at that number. Should a question arise as to whether express consent was provided, the burden will be on the creditor to show it obtained the necessary prior express consent. Similarly, a creditor on whose behalf an autodialed or prerecorded message call is made to a wireless number bears the responsibility for any violation of the Commission's rules. Calls placed by a third party collector on behalf of that creditor are treated as if the creditor itself placed the call. A third party collector may also be liable for a violation of the Commission's rules. In addition, prior express consent provided to a particular creditor will not entitle that creditor (or third party collector) to call a consumer's wireless number on behalf of other creditors, including on behalf of affiliated entities.

The Commission also reiterates that the plain language of section 227(b)(1)(A)(iii) of the Communications Act prohibits the use of autodialers to make any call to a wireless number in the absence of an emergency or the prior express consent of the called party. The Commission notes that this prohibition applies regardless of the content of the call, and is not limited only to calls that constitute ''telephone solicitations.''

However, the Commission agrees with ACA and other commenters that calls solely for the purpose of debt collection are not telephone solicitations and do not constitute telemarketing. Therefore, calls regarding debt collection or to recover payments are not subject to the TCPA's separate restrictions on ''telephone solicitations.''

In document FCC 07–232, the Commission affirms that a predictive dialer constitutes an automatic telephone dialing system and is subject to the TCPA's restrictions on the use of autodialers. In its Supplemental Submission, ACA argues that the Commission erred in concluding that the term ''automatic telephone dialing system'' includes a predictive dialer. ACA states that debt collectors use predictive dialers to call specific numbers provided by established customers, and that a predictive dialer meets the definition of autodialer only when it randomly or sequentially generates telephone numbers, not when it dials numbers from customer telephone lists.

As noted above, the Commission first sought comment on predictive dialers in 2002 and asked whether using a predictive dialer is subject to the TCPA's autodialer restrictions. The Commission found that, based on the statutory definition of ''automatic telephone dialing system,'' the TCPA's legislative history, and current industry practice and technology, a predictive dialer falls within the meaning and definition of autodialer and the intent of Congress. The Commission noted that the evolution of the teleservices industry had progressed to the point where dialing lists of numbers was far more cost effective, but that the basic function of such dialing equipment, had not changed—the capacity to dial numbers without human intervention. The Commission noted that it expected such automated dialing technology to continue to develop and that Congress had clearly anticipated that the FCC might need to consider changes in technology.

Moreover, the Commission noted that the TCPA does not ban the use of automated dialing technology. It merely prohibits such technologies from dialing emergency numbers, health care facilities, telephone numbers assigned to wireless services, and any other numbers for which the consumer is charged for the call. Such practices were determined by Congress to threaten public safety and inappropriately shift costs to consumers. Most importantly, the Commission said that, to find that calls to emergency numbers, health care facilities, and wireless numbers are permissible when the dialing equipment is paired with predictive dialing software and a database of numbers, but prohibited when the equipment operates independently of such lists, would be inconsistent with the avowed purpose of the TCPA and the intent of Congress in protecting consumers from such calls. ACA raises no new information about predictive dialers that warrants reconsideration of these findings. With this ruling, however, creditors and debt collectors may use predictive dialers to call wireless phones, provided the wireless phone number was provided by the subscriber in connection with the existing debt. The Commission notes, however, that where the subscriber has not made the number available to the creditor regarding the debt, we expect debt collectors to be able to utilize the same methods and resources that telemarketers have found adequate to determine which numbers are assigned to wireless carriers, and to comply with the TCPA's prohibition on telephone calls using an autodialer or an artificial or prerecorded voice message to wireless numbers.

Congressional Review Act

The Commission will not send a copy of document FCC 07–232 pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because no new rules were adopted in the document.

Ordering Clauses

Pursuant to sections 1–4, 227, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 227 and 303(r); and § 64.1200 of the Commission's rules, 47 CFR 64.1200, document FCC 07–232 *is adopted.*

By Commission authority, the Request for Clarification filed by ACA International in CG Docket 02–278 on October 4, 2005 and supplemented by ACA on April 26, 2006, *is granted* insofar as ACA seeks clarification that autodialed and prerecorded message calls to wireless numbers that are provided by the called party to a creditor in connection with an existing debt are permissible as calls made with the ''prior express consent'' of the called party, and in all other respects, *is denied.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–1891 Filed 1–31–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 98–120; FCC 07–170]

Carriage of Digital Television Broadcast Signals

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This *Third Report and Order* finalizes the material degradation requirements adopted by the Commission in 2001, and establishes two alternative approaches that cable operators may use to meet their responsibility to ensure that cable subscribers with analog television sets can continue to view all must-carry stations after the end of the DTV transition. The Commission adopts rules to ensure that cable subscribers will continue to be able to view broadcast stations after the transition, and that they will be able to view those broadcast signals at the same level of quality in which they are delivered to the cable system. The Commission announces these rules now to ensure that cable operators and broadcasters have sufficient time to prepare to comply with them.

DATES: Effective March 3, 2008.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the Office of the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to Cathy Williams, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *PRA@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, please contact Lyle Elder, *Lyle.Elder@fcc.gov*, or Eloise Gore, *Eloise.Gore@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 on (202) 418–2918, or via the Internet at *PRA@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's Third Report and Order in CS Docket No. 98–120, FCC 07–170, adopted September 11, 2007, and released November 30, 2007. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Paperwork Reduction Act of 1995 Analysis:

This document contains modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, will invite the general public to comment on the information collection requirements contained in this R&O as required by the Paperwork Reduction Act of 1995, Public Law 104–13. The Commission will publish a separate **Federal Register** Notice at a later date seeking these PRA comments from the public. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

Summary of the Third Report and Order

1. As discussed below, the Act requires that cable systems carry broadcast signals without material degradation and ensure that all subscribers can receive and view mandatory-carriage signals. This *Third Report and Order* finalizes the material degradation requirements adopted by the Commission in 2001, and establishes two alternative approaches that cable operators may use to meet their responsibility to ensure that cable subscribers with analog television sets can continue to view all must-carry stations after the end of the DTV transition. Cable operators may either carry such signals in analog, or, for all-digital systems, carry the signal in digital only.

A. Material Degradation—Sections 614(b)(4)(A) and 615(g)(2)

2. In this section, we adopt rules requiring that cable operators not discriminate in their carriage between broadcast and non-broadcast signals, and that they not materially degrade broadcast signals. As explained below, we reaffirm the approach adopted by the Commission in 2001 to determining whether material degradation has occurred, as well as the requirement that HD signals be carried in HD.

3. The Act requires that cable operators carry local broadcast signals ''without material degradation,'' and instructs the Commission to ''adopt carriage standards to ensure that, to the extent technically feasible, the quality of signal processing and carriage provided by a cable system for the carriage of local commercial television stations will be no less than that provided by the system for carriage of any other type of signal.'' As noted above, section 614(b)(4)(B) of the Act directs the Commission ''to establish any changes in the signal carriage requirements of cable television systems necessary to ensure cable carriage of such broadcast signals of local commercial television stations which have been changed'' as a result of the DTV transition.

4. In the *Second Further Notice of Proposed Rulemaking (Second FNPRM)* 72 FR 312444, December 31, 2007, we sought comment on proposals for ensuring that broadcast signals would not be materially degraded after the digital transition. We proposed that the measurement by which we determine whether an operator is degrading the broadcast signal change from a subjective to an objective standard or, in the alternative, to maintain the comparative standard established in the *First Report and Order* 66 FR 16523, March 26, 2001. We asked whether we should require cable operators to pass through all primary video and program-related bits (''content bits''). In addition, we proposed a rule that would create a framework for negotiations between cable operators who wanted to carry fewer than all content bits and the broadcasters whose signals were at issue. Such a rule would require any operator that wished to carry fewer than all content bits to demonstrate to the broadcaster that it could meet the picture-quality-nondegradation standard without carriage of all content bits. Finally, in the *Second FNPRM*, we reminded commenters of the existing requirement to carry high definition signals in HD to those subscribers who have signed up for an HD package, and

reiterated that this requirement will continue after the transition.

5. We retain the requirement that HD signals be carried in HD, as well as the comparative approach to determining whether material degradation has occurred. In 2001, the *First Report and Order* established two requirements to avoid material degradation. First, ''a cable operator may not provide a digital broadcast signal in a lesser format or lower resolution than that afforded to any'' other signal on the system. Second, a cable operator must carry broadcast stations such that, when compared to the broadcast signal, ''the difference is not really perceptible to the viewer.'' Thus, ''a broadcast signal delivered in HDTV must be carried in HDTV.'' Because we decline to rely on measurement of bits to determine whether degradation has occurred, we do not require carriage of all content bits. Additionally, for the reasons described below, we decline to adopt the proposed negotiation framework.

6. The Act requires that broadcast signals not be ''materially degraded.'' It also requires the Commission to ''adopt carriage standards to ensure that, to the extent technically feasible, the quality of signal processing and carriage provided by a cable system for the carriage of local commercial television stations will be no less than that provided by the system for carriage of any other type of signal.'' The Commission stated in 2001 that ''[f]rom our perspective, the issue of material degradation is about the picture quality the consumer receives and is capable of perceiving.'' Cable commenters argued that this should remain the focus of the Commission's decision making, and we agree.

7. We considered the ''all content bits'' proposal, the main benefit of which was a clear means of measurement and consequently ease of enforcement. Ultimately, we conclude, however, that the all content bits approach is likely to stifle innovation and the very efficiency that digital technology offers, and may be more exacting a standard than necessary to ensure that a given signal will be carried without *material* degradation. We also conclude that it is unnecessary at this time to impose such a requirement in light of the paucity of material degradation complaints over the 15 years since enactment of the Must Carry statute.

8. A number of commenters support the existing standard, and most argue that a comparative approach remains the best method of measuring material degradation. As these commenters point out, there is little evidence to indicate otherwise. We note Comcast's observations that there appear to have been no more than two material degradation complaints since the 1992 adoption of the prohibition, and that both of those were dismissed. Even if there has been limited opportunity to ''test'' these rules in a digital context, there is every reason to believe that they will prove just as robust in an environment of greater attention to picture quality.

9. Furthermore, there are technological benefits to the current comparative standard. Time Warner argues that the content bits standard proposed in the *Second FNPRM* would require devoting additional bandwidth to carriage even when it would not improve the quality of the transmitted image, hurting consumers by limiting other uses of the bandwidth. AT&T further argues that an ''all content bits'' standard could ''dampen[ ] incentives to invest in video compression and other technologies * * * that would allow even greater transmission efficiencies and higher quality pictures.'' We recognize these concerns, and do not intend to impede improvements in technology. Some cable operators may, currently or in the future, rely on advanced compression technologies such as MPEG 4 to provide service to subscribers with greater efficiency. We particularly recognize the value of compression technologies that take the broadcast signal back to uncompressed baseband and then re-encode it in a more efficient manner without materially degrading the picture. Such advanced compression utilizes a minimum bit rate that does not reduce the quality of the resolution. We agree with commenters that a comparative standard is currently the best way to encourage and reward technological innovations, like MPEG4 compression, that allow for more efficient use of bandwidth without diminishing viewer experience.

10. We decline to adopt the proposal of Agape Church Inc., that we require carriage of secondary channels. Our rules here focus only on the broadcaster's primary video and program related content. The prohibition on material degradation adds no additional requirement to carry non-program-related content.

11. Commenters requested clarification that downconversion to analog does not constitute material degradation. We accordingly clarify that it is not material degradation to downconvert that signal to comply with the ''viewability'' requirement discussed below.

12. As noted above, we do not adopt the negotiation framework proposed in the *Second FNPRM*, and direct parties to continue to follow the rules as established in section 76.61. Both broadcasters and cable operators, the parties who would be involved in these negotiations, raised serious objections to the proposal. The National Association of Broadcasters (''NAB'') and The Association for Maximum Service Television (''MSTV'') are highly critical of any required negotiations, particularly ones which would begin and end upon the request of operators. They state that the 30 day window for carriage complaints is too short, and that the proposal as a whole places the burden of ensuring compliance on the broadcasters, rather than on the operators who have the duty by statute. Finally, they argue that the requirements and penalties for noncompliance are insufficiently detailed or strict. Cable commenters object to the requirement that operators make a showing of non material-degradation to the satisfaction of the broadcaster. They express concern about what they anticipate would be: (1) A major shift in power to must-carry broadcasters, who do not have an incentive to bargain; and (2) an addition of significant transaction costs for operators, who currently do not negotiate with must carry stations at all. They argue that this would add an unnecessary complication to mandatory carriage. As NAB and MSTV note, the goal of these rules is to provide cable subscribers with the full benefits of the digital transition. Given the broad based objections to the proposal, we decline to establish a formal procedure by which broadcasters would waive the material degradation requirements. We note that enforcement of the material degradation requirements is initiated by a broadcaster's carriage complaint, and that the rules provide for the broadcaster to complain first to the cable operator before filing such a complaint. This gives the parties an opportunity to informally address material degradation disputes, and if the station is satisfied with the resultant carriage, no complaint will be filed. No additional formal process is necessary. 47 CFR 76.61.

B. Availability of Signals—Sections 614(b)(7) and 615(h)

13. In this section, we adopt rules requiring cable systems that are not ''all-digital'' to provide must-carry signals in analog, while ''all-digital'' systems may provide them in digital form only. We also require that the cost of any downconversion be borne by operators, but that downconverted signals may count toward the cap on commercial

broadcast carriage. Pursuant to sections 614 and 615 of the Act, cable operators must ensure that all cable subscribers have the ability to view all local broadcast stations carried pursuant to mandatory carriage. Specifically, section 614(b)(7) (for commercial stations) states that broadcast signals that are subject to mandatory carriage must be ''viewable via cable on *all* television receivers of a subscriber which are connected to a cable system by a cable operator or for which a cable operator provides a connection.'' Similarly, section 615(h) for noncommercial stations states that ''[s]signals carried in fulfillment of the carriage obligations of a cable operator under this section shall be available to every subscriber as part of the cable system's lowest priced tier that includes the retransmission of local commercial television broadcast signals.'' These statutory requirements plainly apply to cable carriage of digital broadcast signals, and, as a consequence, cable operators must ensure that all cable subscribers—including those with analog television sets—continue to be able to view all commercial and non-commercial must-carry broadcast stations after February 17, 2009.

14. These rules shall be in force for three years from the date of the digital transition, subject to review by the Commission during the last year of this period (i.e., between February 2011 and February 2012). In light of the numerous issues associated with the transition, it is important to retain flexibility as we deal with emerging concerns. A three-year sunset ensures that both analog and digital cable subscribers will continue to be able to view the signals of must-carry stations, and provides the Commission with the opportunity after the transition to review these rules in light of the potential cost and service disruption to consumers, and the state of technology and the marketplace. To assist the Commission in this review, we will include questions in our annual Cable Price Survey to assess, for example, digital cable penetration, cable deployment of digital set-top boxes with various levels of processing capabilities, and cable system capacity constraints.

15. In the *Second FNPRM*, we sought comment on proposals that would ensure the viewability, for all subscribers, of signals carried pursuant to mandatory carriage. To that end, we proposed that

> cable operators must either: (1) Carry the signals of commercial and non-commercial must-carry stations in analog format to all analog cable subscribers, or (2) for all-digital systems, carry those signals only in digital format, provided that all subscribers with analog television sets have the necessary equipment to view the broadcast content.

We also proposed that the cost of any down conversion rendered necessary by these rules be borne by the cable operators.

16. We adopt these proposals, and note that they apply to all operators, regardless of their rate-regulated status. In sum, cable operators must comply with the statutory mandate that must-carry broadcast signals ''shall be viewable via cable on all television receivers of a subscriber which are connected to a cable system by a cable operator or for which a cable operator provides a connection,'' and they have two options of doing so. First, to the extent that such subscribers do not have the capability of viewing digital signals, cable systems must carry the signals of commercial and non-commercial must-carry stations in analog format to those subscribers, after downconverting the signals from their original digital format at the headend. This proposal is in line with the approach already voluntarily planned by many cable operators, as described in testimony by Time Warner CEO Glenn Britt before the House Subcommittee on Telecommunications and the Internet. In the alternative, operators may choose to operate ''all-digital systems.'' ''All-digital'' systems are systems that do not carry analog signals or provide analog service. Under this option, operators will not be required to downconvert the signal to analog, and may provide these stations only in a digital format. In any event, any downconversion costs will be borne by the operator.

17. To fulfill its must-carry obligations in cases where a cable operator uses digital-to-analog converter boxes that do not have analog tuners, the operator can deliver a standard definition digital version of a must-carry broadcaster's high definition digital signal, in addition to the analog and high definition signal, or use boxes that convert high definition signals for viewing on an analog television set, or use other technical solutions so long as cable subscribers have the ability to view the signals.

18. As NCTA notes, the congressionally mandated end of the Digital Television transition does not apply directly to cable operators. We thus recognize that there may be two different kinds of cable systems for some period of time after the DTV transition is complete. Some operators may choose to deliver programming in both digital and analog format. NAB and MSTV describe these systems as those in which they ''keep an analog tier and continue to provide local television signals (and perhaps many cable channels as well) to analog receivers in a format that does not require additional equipment.'' Other operators may choose, as many already have, to operate or transition to ''all-digital systems,'' and as NAB and MSTV further note, ''virtually all cable operators ultimately will do so.'' Game Show Network, LLC (''GSN'') questions why there should be any rules protecting owners of analog sets, since that is ''a format the government itself has determined is no longer worthy of any spectrum.'' Congress did decide to end analog broadcasting, but declined to turn its backs on the millions of Americans with analog sets. Thus, they established the NTIA converter box program to protect the continued availability of over-the-air signals to all Americans; they accepted the claims of the cable industry that subscribers with analog sets would continue to be served; and we now establish these rules to ensure that those subscribers do continue to be served.

19. NAB proposes that cable operators carry all broadcasters on their systems in the same manner; i.e., if one must carry station is carried in analog, all broadcasters, whether carried pursuant to retransmission consent or must carry, would be carried in analog. Cable operators object to this proposal, and we decline to adopt it. Although a system that is not ''all-digital'' will be required to carry analog versions of all must-carry signals to ensure their viewability, retransmission consent stations may be carried in any manner that comports with the private agreements of the parties.

20. The ''viewability'' requirement that we adopt today is based on a straightforward reading of the relevant statutory text. While some cable commenters dispute our interpretation of section 614(b)(7), their arguments are at odds with both the plain meaning of the statutory text as well as the structure of the provision. These commenters principally argue that the viewability mandate is satisfied whenever cable operators transmit broadcast signals and ''*offer* to sell or lease * * * a converter box' to their customers'' that will allow those signals to be viewed on their receivers. To the extent that such subscribers do not have the necessary equipment, however, the broadcast signals in question are not ''viewable'' on their receivers. In addition, it is important to note that the relevant question under the statute is not whether subscribers can view over-the-air broadcast signals using their receivers. Rather, it is whether

subscribers can view the signals of broadcast stations that are carried through their cable system. *See* 47 U.S.C. 534(b)(7). To be sure, ''[i]f a cable operator authorizes subscribers to install *additional* receiver connections, but does not provide the subscriber with such connections, or with the equipment and materials for such connections, the operator [is only required to] notify such subscribers of all broadcast stations carried on the cable system which cannot be viewed without a converter box and * * * offer to sell or lease such a converter box to such subscribers at rates in accordance with section 623(b)(3).'' But these commenters confuse the separate mandates set forth in the second and third sentences of section 614(b)(7), a distinction we clarified as early as 1993. As NAB and MSTV observe, ''there is no evidence that the third sentence of section 614(b)(7) was intended to narrow the scope of the viewability requirement for sets connected by cable operators.'' For every receiver ''connected to a cable system by a cable operator or for which a cable operator provides a connection,'' that operator must ensure that the broadcast signals in question are actually viewable on their subscribers' receivers.

21. As we explained in the *Second FNPRM*, the operators of either all-digital or mixed digital-analog systems will be responsible under the statute for ensuring that mandatory carriage stations are actually viewable by all subscribers, ''including those with analog television sets.'' Two commenters argued that our proposed rules were overbroad, because analog-only televisions will not ''qualify as 'television receivers' after the transition for purposes of the viewability requirement.'' These arguments fail to recognize, however, that the hard deadline set by Congress does not apply to Low Power television stations, including translators and Class A stations. Thus, Low Power broadcasters, operating hundreds of channels, will still be lawfully transmitting analog signals on February 18, 2009, and for some period of time afterwards. Those consumers who rely on Low Power stations and turn on their over-the-air analog sets that morning to watch a local newscast will be using a device ''engaged or able to engage in 'the process of * * * radio transmission.' '' More broadly, as NAB and MSTV point out, the Commission's authority over these sets is not predicated merely on their ability to receive over the air signals. Rather, we believe that a device that allows subscribers to view signals sent by their cable operator is a television receiver for purposes of section 614(b)(7) of the Act.

22. NCTA also argues that the situation in the early 1990s that spurred the creation of these viewability requirements was different from the situation that will be faced by consumers post-transition. Therefore, they posit, it is inappropriate to rely on sections 614(b)(7) and 615(h) to address viewability on analog receivers. To begin with, it is our primary task to implement the text of the statutory provision. While the enactment of a statute may be principally aimed at a particular set of circumstances present at the time, it is often written in general language so that it applies to similar sets of circumstances in the future. As the United States Supreme Court has instructed, ''statutory prohibitions often go beyond the principal evil to cover reasonably comparable evils, and it is ultimately the provisions of our laws rather than the principal concerns of our legislators by which we are governed.'' In any event, the cable commenters' own descriptions of the driving force behind the statutory provision demonstrate that the situation at hand is directly analogous. NCTA explains that ''[a]t the time [of the provision's enactment], certain television sets were not 'cable-ready' and could not receive [some] channels at all,'' and observes that the Commission therefore required converter boxes provided by cable operators to contain ''the necessary channel capacity to permit a subscriber to access a UHF must-carry signal through the converter.'' Replace ''cable-ready'' with ''digital cable-ready,'' and ''UHF'' with ''digital,'' and NCTA has described the problem at hand, and one of the options the Commission has again offered to resolve it. The Commission's charge is to implement the statutory language enacted by Congress, and this language reflects Congress's unambiguous determination that broadcast signals must be viewable by all cable subscribers. Indeed, as NAB and MSTV note, ''the authority that Congress gave the Commission under section 614(b)(4)(B) to make rules regarding advanced television reflects Congress' understanding that broadcast technology certainly would change over time, and that the Commission was expected to modify the carriage rules as needed.'' While the circumstances today differ from those present at the time of the provision's enactment, the basic issue, ensuring the viewability of broadcast signals, is the same.

23. Time Warner argues that we do not have the authority to read section 614(b)(7) as a ''manner of carriage'' requirement, even to offer analog carriage as one option for complying with the statute. They see the Commission's early interpretation of the viewability provision as a statement that operators must provide converter boxes ''in a specific and limited context,'' and that the section cannot serve as the basis for a carriage requirement. On the contrary, the Commission has frequently allowed cable operators to meet their 614(b)(7) obligations by placing must carry signals on a channel viewable to all subscribers instead of by providing boxes. The rules we adopt today are firmly grounded in longstanding Commission practice, and echo previous solutions to similar problems.

24. Some cable programmer commenters, such as the Weather Channel, argue that the proposal ''unquestionably would consume vast amounts of cable system bandwidth'' with duplicative programming. In actuality, as Time Warner admits, these rules will not have an impact on the carriage of most stations; the ''vast majority of broadcasters opt for retransmission consent.'' Thus, as NAB notes in its reply, any incremental increase of bandwidth devoted to must-carry stations will be ''negligible.'' Gospel Music Channel, LLC (Gospel) articulates a concern that flows from Weather Channel's: That these rules could reduce their chances of carriage on any given system. While we recognize Gospel's concerns, Congress already acknowledged them when it mandated that systems with more than 12 usable activated channels need carry local commercial television stations only ''up to one-third of the aggregate number of usable activated channels of such system[s].'' Furthermore, Gospel fails to recognize that to the extent operators choose the second option and become ''all-digital,'' these rules could contribute to a very positive impact on independent programmers' ability to make carriage deals due to the concomitant effective increase in channel capacity. The Africa Channel, et al. (''TAC'') also argue that the potential loss of independent cable programmers serving focused audiences ''are digital transition issues as important as a consideration of what constitutes viewability or material degradation for broadcasters who are the least likely television market participants to be left behind with or without burdensome new must-carry rules.'' In essence, TAC argues that independent cable programmers deserve protections on par with must-carry broadcasters. Congress, however, disagrees, and the Supreme Court has

upheld the must-carry regime to ensure the viewability and prevent the material degradation of the signals of those broadcasters.

25. Some commenters have incorrectly characterized our rule as ''dual carriage.'' Comcast attempts to frame this requirement as ''a requirement to carry broadcast signals in [analog] * * * in perpetuity.'' Not only is this not the Commission's rule, Comcast's proposal for avoiding ''dual carriage'' would read ''viewability'' itself out of the Act. Dual carriage, as considered and rejected by the Commission, would have required cable operators ''to carry both the digital and analog signals of a station during the transition when television stations are still broadcasting analog signals''; that is, the mandatory simultaneous carriage of two different channels broadcast by the same station. The Commission ultimately rejected this concept. The rule we establish in this *Third Report and Order* is quite distinct. It requires carriage only of a single broadcast signal, and gives operators the freedom to choose how to ensure that signal is viewable by all subscribers. It does not require carriage of more than one broadcast signal from a given must-carry broadcaster, and it does not require carriage of an analog version of a signal unless an operator chooses not to operate an all-digital system.

26. NCTA notes that the Act allows a cable operator to decline to carry signals from stations whose programming substantially duplicates that of a station it already carries. The commenter argues from this that the statute can not be read to require carriage of additional versions of a signal under any circumstances. The connection, however, is tenuous at best. Section 614(b)(5) speaks specifically to the issue of the carriage of different stations providing substantially identical programming, and does not address a requirement to carry multiple versions of a single station's signals. In the former case, subscribers would be receiving multiple channels all showing the same programs at virtually the same time. In this case, however, some subscribers will not be able to see any of a station's programming unless a downconverted version is carried. From the perspective of these subscribers, the actual people sections 614 and 615 were designed to reach, there need not be more than one viewable version of a broadcaster's signal—but there must be at least one.

27. Comcast argues that enforcement of the viewability provisions of the Act will force the Commission into conflict with other sections of the Act, particularly the effective competition provisions of section 623(b). Comcast misstates the case, however, when it says that a deregulated system may provide must carry stations ''in any format that it wishes.'' Indeed, as the Commission made clear in the 2001 Order, signals broadcast in HD must be carried by cable operators in HD, regardless of whether or not the system is rate-regulated. While some requirements are lifted when an operator is deregulated, deregulation is not an exemption from the carriage requirements of the statute. Stations electing mandatory carriage must be carried, they must not be materially degraded, and they must be made viewable.

28. If an operator chooses not to operate an ''all-digital system'' and therefore ensures viewability by providing a digital broadcast signal and a downconverted version of the signal for analog subscribers, it will in some cases use more than the 6 MHz of bandwidth occupied by an analog must-carry signal alone. Comcast argues that this improperly forecloses the use of the bandwidth for other purposes. Congress recognized the importance of preserving cable bandwidth for non-broadcast programmers when it mandated that systems with more than 12 usable activated channels need carry local commercial television stations only ''up to one-third of the aggregate number of usable activated channels of such system[s].'' This limit has been upheld by the courts and will continue to ensure that operators have sufficient bandwidth for carriage of non-broadcast programming and other services. Moreover, to the extent that a cable operator wishes to free bandwidth for other purposes, it may choose to operate an ''all-digital'' system.

29. We are bound by statute to ensure that commercial and non-commercial mandatory carriage stations are actually viewable by all cable subscribers. The Commission also believes, however, that it is important to provide cable operators flexibility in meeting the requirements of sections 614(b)(7) and 615(h). Therefore, we have declined to require a specific approach, instead allowing operators to choose whether or not to operate ''all-digital systems,'' and therefore whether or not to provide mandatory carriage stations in an analog format. This is in accord with the Commission's decision, in the *First Report and Order*, not to require operators to provide set-top boxes.

30. Time Warner argues that the requirement of section 629, that navigation devices be available at retail, supersedes the requirements of section 614(b)(7), which was enacted four years earlier. We disagree. Section 629(f) provides that ''[n]othing in this section shall be construed as expanding or limiting any authority that the Commission may have under [the] law'' prior to the 1996 Telecommunications Act. This includes the viewability provisions of section 614(b)(7). Furthermore, Time Warner's argument is premised on an interpretation of section 614(b)(7) that we decline to adopt, namely that it requires cable operators to provide set top boxes. Indeed, the retail availability of set-top boxes should facilitate subscriber purchase of digital equipment and lessen the burden on all-digital cable operators to provide such boxes. However, we adopt the analog downconversion option to address these very concerns, and provide an option which does not even potentially implicate set-top boxes. An operator may choose not to go ''all-digital,'' and instead satisfy its section 614(b)(7) obligations by downconverting must carry stations to analog, until the operator concludes that the local market is ready for an all-digital cable system.

31. We note that Americans for Tax Reform, Ovation, LLC, and other commenters appear to misapprehend the functionality of the ''converter boxes'' that will be available through the NTIA coupon program. These boxes will, by design, be limited to use in converting over-the-air digital signals into analog signals that can be interpreted by an analog television. Because of differences in the modulation used by digital broadcasters and digital cable systems, these boxes will not be usable by digital cable subscribers to connect their analog receivers. Such converters will be available, but it is important to ensure that the public understands that there are different functionalities provided by different boxes.

32. Discovery observes that, during the transition period, a digital-only broadcaster has had the right to request carriage in digital only, rendering it non-viewable to analog subscribers. As the Commission explained in the *First Report and Order,* however, this is an interim policy, assisting both broadcasters and cable operators to adjust to digital broadcasting over a limited period of time. Discovery argues that the post-transition period will ''similarly be limited,'' and indeed, eventually analog-only sets will be as rare as VHF tuner-only sets are today. There are still important differences, however. In the post-transition period, every channel subject to mandatory carriage will be broadcast solely in digital, while the use of analog receivers

will continue for an indefinite time. Furthermore, making stations actually viewable to cable subscribers is the most fundamental interest expressed in the must carry rules that have been upheld by the Supreme Court. If we declined to enforce the viewability requirement it would render the regime almost meaningless, contrary to the clearly expressed will of the Congress as upheld by the Supreme Court.

33. Because the interim policy governing downconversion makes it an option exercised by broadcasters, they are responsible for any associated costs. Cequel argues that post-transition analog downconversion would only be necessary because the broadcaster itself is no longer providing an analog signal, and that any costs should therefore be borne by the broadcaster. Agape Church Inc. and other broadcast commenters agree with our proposal that, because the decision will shift to cable operators after the transition, so should the costs. NAB and MSTV further argue that these downconversion costs would be modest. ACA says that one of its members paid as much as $4,390.25 per channel to downconvert from HD to analog, and argues in an ex parte that these costs could approach $16,500 per channel. We find this estimate surprisingly high and note that $12,000 of this total appears to be dedicated to format conversion, rather than digital to analog conversion. It is also unclear whether or not the prices or equipment quoted are industry standards, or whether some of the equipment costs presented cumulatively are actually redundant or usable for more than just analog downconversion of one broadcast signal. Nevertheless, we are taking up the issue of flexibility for small cable operators in the *Third FNPRM, infra.* Entravision Holdings, LLC (Entravision) notes that, while it supports our proposal, it would not object to a requirement that broadcasters pay the cost of downconversion if it became necessary in order to ensure the continued viewability of must-carry stations for analog subscribers. However, since the post-transition downconversion will be undertaken by operators at their discretion, in order to comply with the Act, we adopt the proposal that any expense necessary for an operator's compliance with the requirements of sections 614(b)(7) and 615(h) shall be borne by the operator, and not the broadcaster. Specifically, operators of systems that provide analog service are responsible for the cost of downconverting a digital must-carry signal to analog at the headend. To the extent that a standard definition digital subscriber is unable to view a high definition signal via their equipment, operators have a similar responsibility to ensure that the signal is viewable.

34. Such downconverted signals will, however, count toward the one-third carriage cap. Section 614(b)(1)(B) of the Act requires that cable systems with more than ''12 usable activated channels'' devote ''up to one-third of the aggregate number of usable activated channels of such system[s]'' to the carriage of local commercial television stations. Beyond this requirement, the carriage of additional commercial television stations is at the discretion of the cable operator. The Commission determined in the *First Report and Order* that with respect to carriage of digital broadcast signals, the channel capacity calculation will be made by taking the total usable activated channel capacity of the system in megahertz and dividing it by three to find the limit on the amount of system spectrum that a cable operator must make available for commercial broadcast signal carriage purposes. After the transition, when calculating whether an operator has reached or exceeded the one-third cap, we will count the system spectrum occupied by all versions of a commercial broadcast signal (both digital and analog).

35. We also find that operators of systems with an activated channel capacity of 552 MHz or less that do not have the capacity to carry the additional digital must-carry stations may seek a waiver from the Commission. Such systems must, however, commit to continue carrying an analog version such that their subscribers are assured of being able to view all must-carry stations carried on the system.

36. We observe that a number of cable comments imply or state that it is not possible to transition from a system that provides analog service to an all-digital system without the agreement of all current subscribers. While each operator will choose to transition or not based on local market conditions and other business considerations, it is clear that this choice is fully within their discretion. Both of these options are available to all operators at any time, a fact unaffected by this rule. We do note, that as with any change in programming service, particularly one which will have an impact on the compatibility of subscriber equipment, cable operators must comply with certain notice requirements. We remind operators who transition their systems to all-digital that they must provide written notice to subscribers about the switch, containing any information they need or actions they will have to take to continue receiving service.

37. Entravision, licensee of a number of commercial broadcast stations, argues that analog downconversion is the best way to ensure continued viewability, but does not object to the use of other methods by cable operators so long as the result is the same. As an alternative to the option we proposed for systems that continue to carry analog programming, Entravision proposes that must-carry stations be provided in analog, but only until such time as 85% of subscribers in each zip code served by a given operator have the means to view those signals if provided in digital. As Entravision acknowledges, however, the statute requires that must carry broadcast stations be made available to all cable subscribers with analog television sets. As we have noted before, we do not believe we have the authority to exempt any class of subscribers from this requirement, no matter how few the analog subscribers. Therefore, we decline to adopt the proposal offered by Entravision.

38. The Consumer Electronics Association (CEA) asks that the Commission rely on technical solutions shaped by earlier rules and developed by the market to resolve concerns about viewability. CEA suggests that the agency can rely on the retail availability of sets with digital tuners to ensure continued viewability of high quality programming. It argues that this can be assured by requiring the carriage of must carry signals to conform to three requirements: (1) Unencrypted, unscrambled, and in QAM (i.e., ''in the clear''); (2) modulated using MPEG–2, a widely used and accepted codec; and (3) not in switched digital. CEA expresses concern that the requirement to carry must-carry stations ''in the clear'' is not sufficiently articulated outside the context of rate-regulated systems. Although we decline to reach the question of requiring MPEG–2 and prohibiting switched digital, as they are beyond the scope of this proceeding, we do address CEA's essential concern, which is at the heart of our viewability proceeding. Like CEA's proposals, our rules are designed to ensure that all subscribers to a cable system have ''in the clear'' access to all must carry stations.

C. Constitutional Issues

1. The Viewability Requirements Are Consistent With the First Amendment

39. A number of commenters assert that the rules we adopt herein constitute ''mandatory dual carriage'' and are unconstitutional. We disagree. The

statutory must-carry provisions upheld by the Supreme Court in *Turner II* include the requirement that must-carry signals ''shall be viewable'' on all television receivers of a subscriber which are connected to a cable system by a cable operator or for which a cable operator provides a connection. The rules we adopt in this order do nothing more than ensure the continued fulfillment of this statutory mandate at the conclusion of the digital television (''DTV'') transition in February 2009. The must-carry obligation is meaningful only if all cable subscribers are able to view local broadcasters' signals, even if they have analog televisions. If we fail to act, however, analog cable subscribers will be unable to view must-carry stations after the DTV transition. Rather than mandating downconversion to prevent this loss of signals after the transition, however, we offer cable operators a choice: those operators that choose not to operate an ''all-digital system'' must down-convert the broadcasters' digital signal for their analog subscribers. Cable operators that elect to operate ''all-digital'' systems, on the other hand, do not have to down-convert these signals and may provide them solely in a digital format. The choice rests with the individual cable operator. In this way, cable operators decide for themselves, taking into account their particular circumstances, how best to operate following the digital transition.

40. We reject the argument of cable commenters that the ''second option is effectively no option at all,'' or that we have presented cable operators with a ''Hobson's Choice.'' Rather, we believe that the second option represents a viable choice for complying with the viewability mandate. Cable operators complain about the burden of transitioning to ''all-digital systems.'' In particular, they object to requiring subscribers with analog television sets who do not yet have digital-set top boxes to use such boxes because, they argue, it is not ''feasible'' to require those customers to install set-top boxes, because customers do not want set-top boxes, or because of the expense associated with providing the boxes. After the DTV transition, however, some sort of set-top or converter box will be the rule rather than the exception for those Americans with analog television sets. Whether consumers currently obtain video programming through over-the-air broadcasts, cable, or DBS, they generally will need either set-top boxes or digital televisions to receive programming once the transition is complete. Thus, cable operators' fear that they will lose customers to other providers of video programming if they pursue this option seems misplaced. As to cable operators' concerns about the expense of providing set-top boxes, nothing in this order precludes them from recovering the costs of those boxes from subscribers, and cable operators offer no evidence to support their claim that they will lose a meaningful number of customers because of such charges. Indeed, such claims are rather ironic in light of the cable industry's recent practice of raising its prices at a rate significantly in excess of inflation.

41. Cable operators' complaints about the second option are also belied by these same parties' assurances that they have both the incentive and the means to ''mak[e] the digital transition as seamless as possible for their customers.'' NCTA asserts, for example, that cable operators have committed to ''ensure that cable viewers do not experience disruption after February 17, 2009,'' and that they ''already have the means to ensure continuing service to analog television sets with no government intervention or subsidy required.'' Cequel Communications notes that it has every incentive to continue providing must-carry stations to all subscribers after the transition, if only because it welcomes free programming. Comcast similarly assures us that ''cable operators have powerful incentives to meet their customers' demands'' and that ''no cable operator will allow its subscribers to become 'disenfranchised' since to do so would be economically irrational.'' If cable operators, in fact, ''have every incentive to move customers to digital'' and ''equipment will be available to enable cable customers to view digital broadcast signals,'' then we do not understand the cable companies' complaint that the all-digital option is so burdensome that it is merely a ''fantasy.'' Indeed, numerous cable operators have indicated to the Commission their intent to convert to all-digital operations prior to February 2009. The record in this proceeding also demonstrates that cable operators are already reducing analog programming and moving it to digital tiers. For all of these reasons, we conclude that the second option set forth in this item offers cable operators a meaningful choice about how to fulfill their must-carry obligations.

42. Turning to the First Amendment challenge, we do not believe that the ''all-digital'' option for complying with the statute's viewability mandate implicates any First Amendment interest beyond that inherent in the must-carry mandate for digital signals already adopted by the Commission. We note, moreover, that this mandate is significantly less burdensome than the analog must-carry mandate upheld by the Supreme Court in *Turner II* because digital signals occupy much less bandwidth on a cable system than do analog signals. The ''all-digital'' option does not require cable operators to carry *any* additional signals over its system or to displace *any* additional programming beyond that required by the Commission's previously adopted digital must-carry mandate. Rather, it simply requires cable operators to take steps to ensure that all subscribers are able to view signals that will already be carried on their systems, and we do not believe that such a mandate can reasonably be described as an independent ''infringement'' of cable operators' free speech rights.

43. While cable commenters argue that the second option triggers additional First Amendment scrutiny, we do not find their claims to be persuasive. We do not agree that the second option coerces operators into downconverting broadcaster's digital signals or impermissibly penalizes them for failing to downconvert. The purpose and effect of the second option are neither to coerce operators into downconverting nor to penalize them for failing to do so. Rather, they are to provide cable operators with an alternative means of fulfilling the statutory requirement that the signals of must-carry stations must be viewable by all subscribers.

44. However, even if we were to find that the second option implicates a First Amendment interest beyond that inherent in the must-carry mandate for digital signals already adopted by the Commission or, for that matter, that the second option did not represent a realistic choice for cable operators, we would still conclude that our approach here is constitutional because we believe that *both* options for complying with the viewability mandate are fully and independently consistent with the First Amendment.

45. *Content-Neutral Regulation*. As articulated by the Supreme Court in *Turner II*, ''[a] content-neutral regulation will be sustained under the First Amendment if it advances important governmental interests unrelated to the suppression of free speech and does not burden substantially more speech than necessary to further those interests.'' There can be little argument that must-carry obligations are content-neutral regulations. The Supreme Court held in *Turner I* that must-carry does not ''distinguish favored speech from disfavored speech on the basis of the

ideas or views expressed'' but is instead a content-neutral regulation subject to intermediate-level scrutiny under the First Amendment. Similarly, with respect to the first option provided to cable operators today, requiring downconversion of digital signals does not distinguish speech on the basis of content; it merely requires cable operators to carry whatever message the must-carry stations choose to transmit. We thus reject the notion that ensuring that cable subscribers with analog television sets are able to view must-carry stations reflects an ''effort to exercise content control'' that triggers strict scrutiny. With respect to the ''all-digital'' option, we do not think that permitting cable operators to fulfill their must-carry obligations by providing digital must-carry signals that are viewable by all of their subscribers changes the analysis. This option does not distinguish speech on the basis of content; instead, it simply requires that subscribers can view broadcasters' digital signals—regardless of the content those signals contain.

46. We also reject the argument that, in light of ''enormous technological and market changes,'' a First Amendment challenge to must-carry regulations today would be subject to strict scrutiny. This argument is premised on the mistaken notion that the Supreme Court applied intermediate scrutiny to must-carry regulation due to the existence of cable market power. The Court made clear, however, that the applicable level of scrutiny was tied to the content-neutral character of must-carry regulation. Like the regulations upheld in the *Turner* decisions, requiring cable operators to down-convert digital must-carry signals or make such signals viewable by all subscribers is a content-neutral regulation that guarantees the carriage of broadcast programming regardless of content and is not designed to promote speech of a particular content.

47. Moreover, to the extent cable operators' arguments about market power are meant to suggest that they no longer represent the threat to free, over-the-air broadcasting that drove the *Turner* decisions, the evidence convinces us otherwise. Although it faces competition by DBS operators and others, the cable industry by far remains the dominant player in the MVPD market, commanding approximately 69 percent of all MVPD households. By contrast, the percentage of households that rely on over-the-air broadcast signals has declined significantly since the *Turner* decisions. In 1992, 40 percent of American households continued to rely on over-the-air signals for television programming. Today, however, that figure has shrunk to 14 percent. The shift in the competitive balance between broadcast and cable can also be seen in viewership trends. Between 1995 and 2006, ad-supported cable channels' total day share of the market increased from 28 to 49.5 percent, whereas the total day share of ABC, CBS, and NBC affiliates shrunk precipitously from 44 percent to 23.5 percent. As cable capacity and the number of cable programming networks have grown, the fragmentation of the market for video programming has accelerated, further weakening broadcast stations.

48. In addition, cable operators continue to ''exercise 'control over most (if not all) of the television programming that is channeled into the subscriber's home [and] can thus silence the voice of competing speakers with a mere flick of the switch.''' As in 1992, few consumers have the choice of more than one cable operator. Cable systems also are more clustered than they were in 1992. While clustering may have beneficial effects, the Supreme Court has recognized that it also may increase cable's threat to local broadcasters and the risk of anticompetitive carriage denials. Furthermore, the share of subscribers served by the 10 largest multiple system operators (''MSOs'') has continued to accelerate since Congress recognized a trend toward horizontal concentration of the cable industry, ''giving MSOs increasing market power.'' The figure was nearly 54 percent in 1989 and over 60 percent in 1994. The figure remains over 60 percent in 2005. And there remains a significant amount of vertical integration in the cable industry. In 2005, approximately 22 percent of the 531 nonbroadcast video programming networks were vertically integrated with at least one cable operator. ''Congress concluded that vertical integration gives cable operators the incentive and ability to favor their affiliated programming services.''

49. The incentives that the *Turner II* Court recognized for cable operators to drop local broadcasters in favor of other programmers less likely to compete with them for audience and advertisers also have steadily increased. The Court explained that:

> Independent local broadcasters tend to be the closest substitutes for cable programs, because their programming tends to be similar, and because both primarily target the same type of advertiser: those interested in cheaper (and more frequent) ad spots than are typically available on network affiliates. The ability of broadcast stations to compete for advertising is greatly increased by cable carriage, which increases viewership substantially. With expanded viewership, broadcast presents a more competitive medium for television advertising. Empirical studies indicate that cable-carried broadcasters so enhance competition for advertising that even modest increases in the numbers of broadcast stations carried on cable are correlated with significant decreases in advertising revenue for cable systems. Empirical evidence also indicates that demand for premium cable services (such as pay-per-view) is reduced when a cable system carries more independent broadcasters. Thus, operators stand to benefit by dropping broadcast stations.

In addition, the Court observed that ''[t]he incentive to subscribe to cable is lower in markets with many over-the-air viewing options.''

50. Consistent with the *Turner II* Court's analysis, the evidence confirms that local advertising revenue has become an increasingly important source of revenue for the cable industry, ''providing a steady, increasing incentive to deny carriage to local broadcasters in an effort to capture their advertising revenue.'' For example, between 1992 and 2003, cable revenue from local advertising rose dramatically, increasing by approximately 525 percent. Thus, cable operators have even greater incentives today to withhold carriage of broadcast stations.

51. We also cannot conclude that the option of switching between cable and broadcast input significantly weakens cable operators' ability to harm broadcasters. With respect to the A/B switch, the Supreme Court found, *inter alia*, that many households lack adequate antennas to receive broadcast signals and that installation and use of such switches with other video equipment could be cumbersome or impossible. Notwithstanding technical improvements since then, moreover, there is no evidence of consumer acceptance of the switch, or that more households have adequate antennas to receive broadcast signals. And since the percentage of television viewers relying solely on broadcast signals has dropped from approximately 40 percent to 14 percent in the years since *Turner II*, the number of households with adequate antennas to receive broadcast signals through an A/B switch has almost certainly dropped. Thus, while A/B switches have largely moved from mechanical to electronic in the decade since the *Turner* decisions, switching signal sources still remains cumbersome or impossible for television viewers and does not represent an adequate alternative to must-carry regulation. In sum, we cannot conclude that technological and market changes dictate that must-carry obligations

would now be subject to strict constitutional scrutiny.

52. *Important Governmental Interests.* The Supreme Court has already recognized that must-carry regulations serve important governmental interests. In particular, it held that there was substantial evidence to support a finding that must-carry requirements serve the important, and interrelated, governmental interests of (1) preserving the benefits of free, over-the-air local broadcast television; and (2) promoting the widespread dissemination of information from a multiplicity of sources. Congress found, and the Court agreed, that both these interests were threatened by cable operators' refusals to carry local broadcast stations. Broadcasters denied carriage on cable systems lose a substantial portion of their audience, which, in turn, translates into lost advertising revenues. As a result, the stations have less money to invest in equipment and programming, leading to further reductions in audience size. This cycle of audience loss followed by revenue loss repeats to the point that the stations ''deteriorate to a substantial degree or fail altogether.'' Thus, the viability of local broadcast stations and, consequently, the availability of over-the-air broadcasts for non-cable households depend to a material extent on cable carriage. Furthermore, we note that the must-carry mandate found by the Court in *Turner II* to advance these governmental interests required that the signals of must-carry stations be viewable by all cable subscribers; it did not merely require cable operators to carry such signals and make them viewable to a limited class of their customers.

53. The steps we take here to ensure that cable operators comply with the statutory viewability requirement after the DTV transition serve these same interests. Cable operators are free to choose whether or not to operate as all-digital systems. We require cable operators that choose not to operate ''all-digital systems'' to down-convert the digital broadcast signals; otherwise, their analog subscribers will lose access to must-carry stations altogether on February 17, 2009. This fact distinguishes the present circumstances from those the Commission addressed in 2005 when it decided not to require cable operators to carry both the digital and analog signals of broadcast stations during the DTV transition, while television stations continue to broadcast analog signals. At that time, the Commission concluded that a dual carriage requirement was not needed to preserve over-the-air broadcasting for viewers who lack cable because local analog broadcasts were already carried on virtually every cable system. Therefore, the lack of a dual carriage requirement would not have any meaningful effect on a station's viewership, and there was thus no evidence that the absence of dual carriage would diminish the availability of broadcast signals to non-cable subscribers. In contrast, this order addresses the impact of the end of the DTV transition, where the signals of must-carry stations will be completely unavailable to analog cable subscribers, absent the actions we take here. This obviously poses a much more serious challenge for must-carry stations. For this reason, we do not agree that this order is at odds with the Commission's 2005 constitutional analysis. If cable operators did not downconvert the digital signals, broadcasters would stand to lose an audience of millions of households that are analog cable subscribers and the concomitant advertising revenues, thus jeopardizing their continued health and viability. Should these stations deteriorate or cease to exist, the impact of these lost programming options would fall most heavily on those that most need them: the roughly fifteen percent of Americans who rely solely on over-the-air television, which disproportionately consist of low-income and minority households. This is precisely the harm that Congress sought to prevent when it enacted the must-carry provisions upheld by the Supreme Court in *Turner II*, and no party has suggested a plausible argument that preserving free, over-the-air broadcast television no longer qualifies as an important governmental interest. The Court also recognized that ''preserving a multiplicity of broadcasters'' serves the related governmental interest of ''promoting the widespread dissemination of information from a multiplicity of sources.'' All cable programming other than that carried in fulfillment of must-carry obligations is under the control of cable operators. Unless we act, analog cable subscribers and households that rely solely on over-the-air broadcast television may well face ''a reduction in the number of media voices'' and the loss of ''the widest possible dissemination of information from diverse and antagonistic sources.'' Thus, this Order clearly advances the important governmental interests identified by Congress and upheld by the Supreme Court. Alternatively, cable operators may fulfill their must-carry and viewability obligations by providing digital signals that are viewable by all of their subscribers, thus serving the same governmental interests upheld in the *Turner* cases.

54. In addition, the actions we take here advance a separate, but also important, governmental interest of minimizing adverse consumer impacts associated with the DTV transition. The DTV transition results in the return of analog spectrum that can be allocated for other important, indeed critical, purposes, but Congress also recognized the need to protect consumers by ensuring that their television sets continue to work at the end of the transition just as they do today. To that end, Congress created a program to make available coupons that consumers can use to buy digital-to-analog converter boxes for the analog television sets in their homes. Just as Congress sought to minimize the burden of the DTV transition on consumers who rely on over-the-air broadcasting, we act here to minimize the impact of the DTV transition on cable subscribers. Analog downconversion minimizes the impact of the DTV transition on cable subscribers who do not own digital television sets. By ensuring that these consumers continue to receive local broadcast signals, we ensure that they experience little or no disruption in service due to the DTV transition. We do not agree that requiring cable systems offering analog programming to down-convert digital signals undermines, rather than promotes, the digital conversion by encouraging continued dependence on analog televisions. Just as Congress's set-top box program does not undermine but merely smoothes the transition for certain vulnerable consumers, we act here to promote widespread consumer acceptance of the DTV transition by addressing a major source of potential consumer confusion and frustration. Similarly, subscribers to cable systems that convert to all-digital operations will continue to receive local broadcast signals without interruption and thus will experience minimal disruption due to the DTV transition.

55. For all of these reasons, we conclude that both options available to cable operators—downconversion of digital signals and the operation of all-digital systems—advance numerous important governmental interests.

56. *Burden on Speech.* The thrust of the cable operators' objections to downconversion is the ''severe burden'' they allege it imposes on protected speech. They contend that a downconversion obligation imposes a greater burden than the must-carry rules upheld in *Turner II* because cable

companies will now be required to transmit the must-carry stations' digital signal *and* down-convert it to analog, thus displacing additional speech. Even assuming that analog downconversion, together with digital must-carry, requires greater bandwidth than existing must-carry requirements, we do not agree that it burdens ''substantially more speech than necessary'' to further the government's important interests.

57. The relative burden that must-carry regulation places on cable operators must be measured in context. At the time of the *Turner* cases, cable capacity was significantly more constrained than it is today. In the early 1990s, most cable systems were all-analog and offered far fewer than 100 channels. In 1995, for example, the Commission defined a ''high capacity'' cable system as a system with 54 or more channels. By contrast, analog carriage today accounts for only a small percentage of the total number of cable channels and spectrum capacity. By 2004, cable operators were providing, on average, 70 analog video channels and approximately 150 digital video channels, with enough additional bandwidth to provide high-definition television, video-on-demand, Internet access services, and both circuit-switched and IP-based voice services. As a result, the *relative* burden of the first option set forth above on cable operators today would be far less of a burden than was the analog mandate upheld by the Supreme Court in *Turner II.*

58. The Supreme Court foresaw in 1994 that ''rapid advances in fiber optics and digital compression technology'' might one day result in ''no practical limitation on the numbers of speakers that may use the cable medium.'' And today, we have every reason to expect that cable capacity will continue to expand in future years, thus further decreasing the relative burden on cable operators. Cable operators continue to develop ways to use their available capacity more efficiently. For example, cable operators, in order to keep pace with their competitors, are beginning to deploy ''switched digital'' capability in their networks. In a switched digital environment, a channel is transmitted via coaxial cable to a subscriber's premises only when the subscriber tunes to that channel. Time Warner already has deployed switched digital in three cities. Time Warner has said that switched digital gives cable operators the means of adding channels and never running out of capacity. Moreover, because digital cable systems offer so much more capacity, the proportion of overall bandwidth devoted to must-carry signals is that much smaller than was the case at the time of the *Turner* decisions. For example, NAB and MSTV explain that 18 basic analog channels, which includes all must-carry stations, represent about 4.2 percent of the total number of channels and about 6.8 percent of the total downstream spectrum of a typical cable system today. In 1993, by contrast, the same number of channels represented 33 percent of the capacity of a ''high capacity'' cable system. We believe that the typical cable operator electing to down-convert digital signals will devote significantly less than one-third of its channel capacity to local broadcasters, the cap that was upheld in *Turner II.*

59. We also conclude that the relative burden on speech of downconversion is outweighed by the benefits. Unless we act, subscribers of cable systems that choose not to operate ''all-digital systems'' will suffer both the loss of local broadcasts and confusion over that loss, and non-MVPD consumers risk deterioration, if not loss, of over-the-air broadcasting options. Preserving local television broadcasting will help these consumers more than a downconversion obligation will hurt cable operators, particularly given that downconversion is necessary only until cable operators complete the transition to all-digital systems. We also reject Time Warner's contention that a downconversion requirement burdens more speech than is necessary because the governmental interests at issue can be promoted in a less burdensome manner—namely by providing digital set-top boxes to subscribers. Time Warner's objection proves too much, of course, for we have provided cable operators with precisely that choice: they may avoid analog downconversion by converting to all-digital systems, including by providing their subscribers with set-top boxes. Also, to the extent that cable operators do not take the necessary steps to ensure that the digital signals of must-carry stations can be viewed by all subscribers, the carriage of analog signals is necessary to advance the governmental interests identified above. Although we conclude that downconversion is in fact necessary to advance important governmental interests, we note that a regulation is not invalid under the intermediate scrutiny analysis even if the government's interest might be adequately served by some less-restrictive alternative. Finally, we note that the cable operators' arguments about the burdens of downconversion are undercut by their admission that they might down-convert on a purely voluntary basis. For all these reasons, we find that analog-down conversion does not burden ''substantially more speech'' than is necessary and, therefore, this option does not violate the First Amendment.

60. We also conclude that the ''all-digital'' option does not burden ''substantially more speech than necessary'' to further the important governmental interests discussed above. Indeed, this option imposes less of a burden on speech than the must-carry regulations upheld in *Turner II.* The transmission of digital signals requires far less bandwidth than that required for analog signals, so cable companies transmitting signals, including must-carry signals, in digital rather than analog will gain bandwidth. In addition, while cable operators complain that transitioning to ''all-digital systems'' will impose an onerous burden on them and therefore does not represent a meaningful choice, we reject those arguments for the reasons discussed above.

61. We conclude, therefore, that both analog downconversion and the ''digital-only'' options are consistent with the First Amendment on a stand-alone basis. By offering cable operators the flexibility to choose, based on their particular circumstances, either option to fulfill their must-carry obligations, moreover, we have minimized the burden imposed on any particular cable operator.

2. The Viewability Requirements Are Consistent With the Fifth Amendment

62. In addition to the First Amendment issue, some parties contend that requiring downconversion of digital must-carry signals constitutes a taking of property without just compensation in violation of the Fifth Amendment. To begin with, as discussed above, we provide cable operators here with two options for complying with the statutory viewability requirement and do not mandate the downconversion of digital signals. But in any event, for the reasons stated below, we also conclude that requiring cable operators to down-convert the digital must-carry signals so that they are viewable by their subscribers with analog televisions would present no problems under the Fifth Amendment.

63. The ''takings'' clause of the Fifth Amendment provides: ''[N]or shall private property be taken for public use, without just compensation.'' In general, there are two types of Fifth Amendment takings: ''per se'' takings and ''regulatory'' takings. Government authorization of a permanent physical occupation of property constitutes a per

se taking. A permanent physical occupation of property is a taking without regard to the public interest that it may serve, the size of the occupation, or the economic impact on the property owner. NAB has argued elsewhere that must carry regulation cannot constitute a per se taking because no physical property is involved; rather the ''property'' taken consists of electronic bits. Moreover, we agree that the downconversion obligation does not affect the takings analysis. As NAB states:

> If requiring cable operators to carry channels of broadcast signals indeed takes 'private property for public use' without compensation, then the requirement is unconstitutional regardless of whether the cable companies must accommodate one, five, or one hundred channels.

64. Applying the above framework to the issue here, we believe that a court would find that a per se takings analysis would not apply. The Supreme Court has advised that a per se taking is ''relatively rare and easily identified,'' and this is not one of those rare and easily identifiable instances. Mandatory carriage regulation effectuates no permanent physical occupation of a cable operator's property, such as the installation of physical equipment that was at issue in *Loretto* v. *Teleprompter Manhattan CATV Corp.* Rather, multiple programming streams are simply transmitted in bits of data over cable bandwidth through electrons or photons at the speed of light while the cable operator retains complete control over its physical property (i.e., headend equipment). Courts have consistently rejected attempts to apply the concept of permanent physical occupation to the technological realm, and we believe these decisions to be consistent with the Supreme Court's admonition that a permanent physical occupation of property is easily identified and, where found, ''presents relatively few problems of proof.''

65. We therefore turn to whether requiring downconversion of digital must-carry signals would constitute a regulatory taking. An allegation that a regulation is so onerous as to constitute a regulatory taking is analyzed under the multi-factor inquiry set forth by the Supreme Court in *Penn Central Transportation Co.* v. *City of New York.* A court will examine the following factors identified in *Penn Central* to determine whether a regulatory taking has occurred: (1) The character of the governmental action; (2) its economic impact; and (3) its interference with reasonable investment-backed expectations. Applying this test here, we easily conclude that requiring downconversion of digital signals does not effectuate a regulatory taking.

66. First, looking at the character of the governmental action at issue here, we believe it to be a quite modest attempt to ''adjust the benefits and burdens of economic life to promote the common good.'' As explained above, requiring downconversion of digital must-carry signals will likely impose only a modest burden on a cable operator's system as a whole and will materially advance the government's important interests in preserving over-the-air broadcasting, promoting the widespread dissemination of information from a multiplicity of sources, and minimizing any adverse consumer impacts associated with the DTV transition. Moreover, it is critical to recognize that the government action here involves what traditionally has been and remains a heavily regulated industry.

67. Second, there is no evidence in the record that the economic impact on cable operators of requiring downconversion will cause significant harm. As we explain above, mandatory carriage of analog signals accounts for only a small percentage of the total number of cable channels and total spectrum capacity. As cable operators continue to convert to digital programming, must-carry signals will impose a decreasing relative capacity burden. Given that the cable channels devoted to the mandatory carriage of commercial broadcast signals is capped at one-third of the cable system's usable capacity and in practice is likely to be significantly less than one-third, we find the economic burden on cable operators to be modest.

68. Third, there is no evidence in the record that requiring downconversion will interfere with reasonable investment-backed expectations. Based upon the statutory cap for commercial stations and the numerical limit for non-commercial stations, cable operators should reasonably expect to devote up to one-third of their capacity to carriage of local broadcast stations. Requiring downconversion of digital must-carry signals does not change this limit. Finally, cable operators should have reasonably expected that they would be required to comply with the statutory viewability mandate after the digital transition. For all of these reasons, we conclude that requiring downconversion does not interfere with reasonable investment-backed expectations.

69. We do not find evidence or persuasive argument in the record that requiring downconversion transforms must-carry regulation into a per se taking or a regulatory taking.

D. Other Issues

70. In its comments, United Communications Corporation made an argument for a revision of the Must Carry rules generally, to increase the carriage rights of low power stations, particularly Class A stations that serve as local network affiliates. Ensuring the continued viability of low power broadcasters is a major concern of the Commission; these proposals, however, are beyond the scope of the current proceeding. We will consider whether there is some alternative or future proceeding in which they could be more fully addressed.

71. Given the statutory directive to treat OVS operators like cable operators with regard to broadcast signal carriage, we find that OVS operators must carry digital-only television stations pursuant to section 76.1506 of the Commission's Rules. Thus, OVS operators must comply with all requirements set forth in this *Third Report and Order.* Section 653(c)(1) of the Act provides that any provision that applies to cable operators under sections 614, 615, and 325 shall apply to open video system operators certified by the Commission. Section 653(c)(2)(A) provides that, in applying these provisions to open video system operators, the Commission ''shall, to the extent possible, impose obligations that are no greater or lesser'' than the obligations imposed on cable operators. The Commission, in implementing the statutory language, held that there are no public policy reasons to justify treating an open video system operator differently from a cable operator in the same local market for purposes of broadcast signal carriage. Thus, OVS operators generally have the same requirements for the carriage of local television stations as do cable operators except that these entities are under no obligation to place television stations on a basic service tier. OVS operators are also obligated to abide by section 325 and the Commission's Rules implementing retransmission consent. We note that section 76.1506(e) specifically emphasizes the mandate to make must-carry signals viewable, and reiterates that the requirements established in this *Third Report and Order* apply equally to cable operators and OVS operators.

E. Conclusion

For the reasons discussed above, we adopt these rules with respect to material degradation and viewability. A number of detailed issues must be addressed now that the broad

framework of rules has been established. We believe it is appropriate to provide stakeholders and the public with an opportunity to weigh in on these matters; therefore the *Third Further Notice* seeks comment on some specific applications of these general rules.

II. Procedural Matters

A. Third Report and Order

1. Final Regulatory Flexibility Analysis

72. As required by the Regulatory Flexibility Act of 1980 (''RFA''), the Commission has prepared a Final Regulatory Flexibility Analysis (''FRFA'') relating to this *Third Report and Order.* The FRFA is set forth in Appendix A of the order.

2. Final Paperwork Reduction Act Analysis

73. This *Third Report and Order* contains modified information collection requirements subject to the Paperwork Reduction Act of 1995 (''PRA''), Public Law 104–13. The modified information collection requirements relate solely to Office of Management and Budget (''OMB'') Control No. 3060–0647, the Commission's Annual Cable Price Survey. They will be submitted to OMB for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the modified information collection requirements contained in this proceeding. The Commission will publish a separate **Federal Register** Notice at a later date seeking these PRA comments from the public. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we have considered how the Commission might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' We find that the modified requirements must apply fully to small entities (as well as to others) to protect consumers and further other goals, as described in the Order.

3. Congressional Review Act

74. The Commission will send a copy of this *Third Report and Order* in a report to be sent to Congress and the Government Accountability Office, pursuant to the Congressional Review Act.

III. Ordering Clauses

75. *It is ordered* that, pursuant to the authority contained in sections 4, 303, 614, and 615 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 303, 534, and 535, this Third Report and Order and Third Further Notice of Proposed Rule Making *is adopted* and the Commission's Rules *are hereby amended* as set forth in Appendix C of the order.

76. *It is further ordered* that this *Third Report and Order* and the rules in Appendix C *are adopted* and *shall be effective* March 3, 2008. The modified information collection requirements concerning the Annual Cable Price Survey will become effective upon approval by the Office of Management and Budget and our publication in the **Federal Register** of a notice announcing the effective date of the modified requirements.

77. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Third Report and Order and Third Further Notice of Proposed Rule Making, including the Initial and Final Regulatory Flexibility Analyses, to the Chief Counsel for Advocacy of the Small Business Administration.

78. *It is further ordered* that the Commission *shall send* a copy of this Third Report and Order and Third Further Notice of Proposed Rule Making in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review *Act*, see 5U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 76 as follows:

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

■ 1. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 336, 338, 339, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

■ 2. Section 76.56 is amended by adding paragraphs (d)(3), (d)(4), (d)(5) and paragraph (f) to read as follows:

§ 76.56 Signal carriage obligations.

* * * * *

(d) * * *

(3) The viewability and availability requirements of this section require that, after the broadcast television transition from analog to digital service for full power television stations cable operators must either:

(i) Carry the signals of commercial and non-commercial must-carry stations in analog format to all analog cable subscribers, or

(ii) For all-digital systems, carry those signals in digital format, provided that all subscribers, including those with analog television sets, that are connected to a cable system by a cable operator or for which the cable operator provides a connection have the necessary equipment to view the broadcast content.

(4) Any costs incurred by a cable operator in downconverting or carrying alternative-format versions of signals under § 76.56(d)(3)(i) or (ii) shall be the responsibility of the cable operator.

(5) The requirements set forth in paragraph (d)(3) of this section shall cease to be effective three years from the date on which all full-power television stations cease broadcasting analog signals, unless the Commission extends the requirements in a proceeding to be conducted during the year preceding such date.

* * * * *

(f) *Calculation of Broadcast Signals Carried.* When calculating the portion of a cable system devoted to carriage of local commercial television stations under paragraph (b) of this section, a cable operator may count the primary video and program-related signals of all such stations, and any alternative-format versions of those signals, that they carry.

■ 3. Section 76.62 is amended by revising paragraph (b) and adding paragraph (h) to read as follows:

§ 76.62 Manner of carriage.

* * * * *

(b) Each digital television broadcast signal carried shall be carried without material degradation. Each analog television broadcast signal carried shall be carried without material degradation and in compliance with technical standards set forth in subpart K of this part.

* * * * *

(h) If a digital television broadcast signal is carried in accordance with § 76.62(b) and either (c) or (d), the carriage of that signal in additional formats does not constitute material degradation.

[FR Doc. E8–1915 Filed 1–31–08; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070213032–7032–01]

RIN 0648–XF44

Fisheries of the Exclusive Economic Zone Off Alaska; Shallow-Water Species Fishery by Amendment 80 Vessels Subject to Sideboard Limits in the Gulf of Alaska

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

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for species that comprise the shallow-water species fishery by Amendment 80 vessels subject to sideboard limits in the Gulf of Alaska (GOA). This action is necessary to fully use the first seasonal apportionment of the 2008 Pacific halibut prohibited species catch (PSC) limit specified for the shallow-water species fishery by Amendment 80 vessels subject to sideboard limits in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 29, 2008, through 1200 hrs, A.l.t., April 1, 2008. Comments must be received at the following address no later than 4:30 p.m., A.l.t., February 13, 2008.

ADDRESSES: You may submit comments, identified by 0648–XF44, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal website at *http://www.regulations.gov*;
- Mail: P.O. Box 21668, Juneau, AK 99802;
- FAX: (907) 586–7557; or
- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK. Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

NMFS closed the directed fishery for the shallow-water species fishery by Amendment 80 vessels subject to sideboard limits in the GOA under § 679.20(d)(1)(iii) on January 23, 2008 (73 FR 4760, January 28, 2008).

NMFS has determined that approximately 10 mt remain in the first seasonal apportionment of the 2008 Pacific halibut PSC limit specified for the shallow-water fishery by Amendment 80 vessels subject to sideboard limits in the GOA. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully utilize the first seasonal apportionment of the 2008 Pacific halibut PSC limit specified for the shallow-water species fishery by Amendment 80 vessels subject to sideboard limits in the GOA, NMFS is terminating the previous closure and is reopening directed fishing for shallow-water species by Amendment 80 vessels subject to sideboard limits in the GOA.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of the shallow-water species fishery by Amendment 80 vessels subject to sideboard limits in the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of January 28, 2008.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Without this inseason adjustment, NMFS could not allow the fishery for shallow-water species by Amendment 80 vessels subject to sideboard limits in the GOA to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until February 13, 2008.

This action is required by § 679.20 and § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: January 29, 2008.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 08–458 Filed 1–29–08; 2:25 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 73, No. 22
Friday, February 1, 2008

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–0341; Airspace Docket No. 07–AAL–19]

Proposed Establishment of Class E Airspace; Kobuk, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class E airspace at Kobuk, AK. Two Standard Instrument Approach Procedures (SIAPs) are being developed for the Kobuk Airport at Kobuk, AK. Additionally, a textual departure procedure (DP) is being developed. Adoption of this proposal would result in establishment of Class E airspace upward from 700 feet (ft.) and 1,200 ft. above the surface at the Kobuk Airport, Kobuk, AK.

DATES: Comments must be received on or before March 17, 2008.

ADDRESSES: Send comments on the proposal to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2007–0341/ Airspace Docket No. 07–AAL–19, at the beginning of your comments. You may also submit comments on the Internet at *http://www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov*. Internet address: *http://www.alaska.faa.gov/at*.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2007–0341/Airspace Docket No. 07–AAL–19.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Documents' Web page at *http://www.access.gpo.gov/nara/index.html*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR part 71), which would establish Class E airspace at the Kobuk Airport, in Kobuk, AK. The intended effect of this proposal is to establish Class E airspace upward from 700 ft. and 1,200 ft. above the surface to contain Instrument Flight Rules (IFR) operations at Kobuk Airport, Kobuk, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has developed two SIAPs and a DP for the Kobuk Airport. The new approaches are (1) the Area Navigation (RNAV) Global Positioning System (GPS) Runway (RWY) 09, Original (Orig) and (2) the RNAV (GPS) RWY 27, Orig. Textual DP's are unnamed and are published in the front of the U.S. Terminal Procedures for Alaska. Class E controlled airspace extending upward from 700 ft. and 1,200 ft. above the surface in the Kobuk Airport area would be created by this action. The proposed airspace is sufficient in size to contain aircraft executing new instrument procedures at the Kobuk Airport, Kobuk, AK.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9R, *Airspace Designations and Reporting Points*, signed August 15,

2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to create Class E airspace sufficient in size to contain aircraft executing instrument procedures at the Kobuk Airport, AK, and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

AAL AK E5 Kobuk, AK [New]

Kobuk, Kobuk Airport, AK
(Lat. 66°54′44″ N., long. 156°53′50″ W.)

That airspace extending upward from 700 feet above the surface within a 7.7-mile radius of the Kobuk Airport; and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of the Kobuk Airport.

* * * * *

Issued in Anchorage, AK, on January 18, 2008.

Anthony M. Wylie,

Manager, Alaska Flight Services Information Area Group.

[FR Doc. E8–1867 Filed 1–31–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–29008; Airspace Docket No. 07–AAL–11]

Proposed Revision of Class E Airspace; New Stuyahok, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to revise Class E airspace at New Stuyahok, AK. Two Standard Instrument Approach Procedures (SIAPs) are being developed for the New Stuyahok Airport at New Stuyahok, AK. Adoption of this proposal would result in revision of existing Class E airspace upward from 700 feet (ft.) and 1,200 ft. above the surface at the New Stuyahok Airport, New Stuyahok, AK.

DATES: Comments must be received on or before March 17, 2008.

ADDRESSES: Send comments on the proposal to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2007–29008/ Airspace Docket No. 07–AAL–11, at the beginning of your comments. You may also submit comments on the Internet at *http://www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov*. Internet address: *http://www.alaska.faa.gov/at*.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2007–29008/Airspace Docket No. 07–AAL–11.'' The postcard

will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Documents' Web page at *http://www.access.gpo.gov/nara/index.html*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR part 71), which would revise the Class E airspace at the New Stuyahok Airport, in New Stuyahok, AK. The intended effect of this proposal is to revise Class E airspace upward from 700 ft. and 1,200 ft. above the surface to contain Instrument Flight Rules (IFR) operations at the New Stuyahok Airport, New Stuyahok, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has developed two SIAPs for the New Stuyahok Airport. The new approaches are (1) the Area Navigation (RNAV) Global Positioning System (GPS) Runway (RWY) 14, Original (Orig) and (2) the RNAV (GPS) RWY 32, Orig. Class E controlled airspace extending upward from 700 ft. and 1,200 ft. above the surface, in the New Stuyahok Airport area would be revised by this action. The proposed airspace is sufficient in size to contain aircraft executing the instrument procedures at the New Stuyahok Airport, New Stuyahok, AK.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9R, *Airspace Designations and Reporting Points*, signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to create Class E airspace sufficient in size to contain aircraft executing instrument procedures at the New Stuyahok Airport, AK, and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

AAL AK E5 New Stuyahok, AK [Revised]

New Stuyahok, New Stuyahok Airport, AK
(Lat. 59°26′59″ N., long. 157°19′42″ W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of the New Stuyahok Airport; and that airspace extending upward from 1,200 feet above the surface within a 71-mile radius of the New Stuyahok Airport.

* * * * *

Issued in Anchorage, AK, on January 18, 2008.

Anthony M. Wylie,

Manager, Alaska Flight Services Information Area Group.

[FR Doc. E8–1868 Filed 1–31–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–0343; Airspace Docket No. 07–AAL–21]

Proposed Revision of Class E Airspace; Anvik, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to revise Class E airspace at Anvik, AK. Two Standard Instrument Approach Procedures (SIAPs) and a textual departure procedure (DP) are being developed for the Anvik Airport at Anvik, AK. Additionally, one SIAP is being amended. Adoption of this proposal would result in revision of existing Class E airspace upward from 700 feet (ft.) and 1,200 ft. above the surface at the Anvik Airport, Anvik, AK.

DATES: Comments must be received on or before March 17, 2008.

ADDRESSES: Send comments on the proposal to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2007–0343/ Airspace Docket No. 07–AAL–21, at the beginning of your comments. You may also submit comments on the Internet at *http://www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov*. Internet address: *http://www.alaska.faa.gov/at*.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2007–0343/Airspace Docket No. 07–AAL–21.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara/index.html*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR Part 71), which would revise the Class E airspace at the Anvik Airport, in Anvik, AK. The intended effect of this proposal is to revise Class E airspace upward from 700 ft. and 1,200 ft. above the surface to contain Instrument Flight Rules (IFR) operations at the Anvik Airport, Anvik, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has developed two SIAPs and a DP, and amended one SIAP for the Anvik Airport. The new approaches are (1) the Area Navigation (RNAV) Global Positioning System (GPS) Runway (RWY) 17, Original (Orig) and (2) the RNAV (GPS) RWY 35, 0rig. The amended approach is the Non-directional Beacon (NDB) RWY 35, Amendment (Amdt) 1. Textual DP's are unnamed and are published in the front of the U.S. Terminal Procedures for Alaska. Class E controlled airspace extending upward from 700 ft. and 1,200 ft. above the surface in the Anvik Airport area would be revised by this action. The proposed airspace is sufficient in size to contain aircraft executing the instrument procedures at the Anvik Airport, Anvik, AK.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9R, *Airspace Designations and Reporting Points*, signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in

Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to create Class E airspace sufficient in size to contain aircraft executing instrument procedures at the Anvik Airport, AK, and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

AAL AK E5 Anvik, AK [Revised]

Anvik, Anvik Airport, AK
(Lat. 62°38′48″ N., long. 160°11′26″ W.)

That airspace extending upward from 700 feet above the surface within an 8.0-mile radius of the Anvik Airport; and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of the Anvik Airport.

* * * * *

Issued in Anchorage, AK, on January 18, 2008.

Anthony M. Wylie,

Manager, Alaska Flight Services Information Area Group.

[FR Doc. E8–1845 Filed 1–31–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–0342; Airspace Docket No. 07–AAL–20]

Proposed Revision of Class E Airspace; Bettles, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to revise Class E airspace at Bettles, AK. Two Standard Instrument Approach Procedures (SIAPs) are being developed for the Bettles Airport at Bettles, AK. Additionally, two SIAPs and a textual departure procedure (DP) are being amended. Adoption of this proposal would result in revision of existing Class E airspace upward from 700 feet (ft.) and 1,200 ft. above the surface at the Bettles Airport, Bettles, AK.

DATES: Comments must be received on or before March 17, 2008.

ADDRESSES: Send comments on the proposal to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2007–0342/Airspace Docket No. 07–AAL–20, at the beginning of your comments. You may also submit comments on the Internet at *http://www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov*. Internet address: *http://www.alaska.faa.gov/at*.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2007–0342/Airspace Docket No. 07–AAL–20.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara/index.html*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed

Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR Part 71), which would revise the Class E airspace at the Bettles Airport, in Bettles, AK. The intended effect of this proposal is to revise Class E airspace upward from 700 ft. and 1,200 ft. above the surface to contain Instrument Flight Rules (IFR) operations at the Bettles Airport, Bettles, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has developed two SIAPs and amended two SIAPs along with a DP for the Bettles Airport. The new approaches are (1) the Area Navigation (RNAV) Global Positioning System (GPS) Runway (RWY) 01, Original (Orig) and (2) the RNAV (GPS) RWY 19, 0rig. The amended approaches are (1) the Very High Frequency Omni-directional Range (VOR)/Distance Measuring Equipment (DME) RWY 03, Amendment (Amdt) 5, (2) the Localizer (LOC)/DME RWY 21, Amdt 1. Textual DP's are unnamed and are published in the front of the U.S. Terminal Procedures for Alaska. Class E controlled airspace extending upward from 700 ft. and 1,200 ft. above the surface in the Bettles Airport area would be revised by this action. The proposed airspace is sufficient in size to contain aircraft executing the instrument procedures at the Bettles Airport, Bettles, AK.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as surface areas are published in paragraph 6002 of FAA Order 7400.9R, *Airspace Designations and Reporting Points*, signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9R, *Airspace Designations and Reporting Points*, signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to create Class E airspace sufficient in size to contain aircraft executing instrument procedures at the Bettles Airport, AK, and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

* * * * *

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

AAL AK E2 Bettles, AK [Revised]

Bettles, Bettles Airport, AK
(Lat. 66°54′50″ N., long. 151°31′44″ W.)

That airspace within a 5.7-mile radius of the Bettles Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

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

* * * * *

AAL AK E5 Bettles, AK [Revised]

Bettles, Bettles Airport, AK
(Lat. 66°54′50″ N., long. 151°31′44″ W.)

That airspace extending upward from 700 feet above the surface within an 8.2-mile radius of the Bettles Airport, and within 3.9 miles either side of the 212°(T), 232°(M) bearing from the Bettles Airport, extending from the 8.2-mile radius to 11.3 miles southwest of the Bettles Airport; and that airspace extending upward from 1,200 feet above the surface within a 72-mile radius of the Bettles Airport.

* * * * *

Issued in Anchorage, AK, on January 18, 2008.

Anthony M. Wylie,

Manager, Alaska Flight Services Information Area Group.

[FR Doc. E8–1842 Filed 1–31–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

19 CFR Parts 4, 12, 18, 101, 103, 113, 122, 123, 141, 143, 149 and 192

[USCBP–2007–0077]

RIN 1651–AA70

Importer Security Filing and Additional Carrier Requirements

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: This document provides an additional 15 days for interested persons to submit comments on the

proposed rule to amend the Customs and Border Protection (CBP) regulations to require both importers and carriers to submit additional information pertaining to cargo before the cargo is brought into the United States by vessel. The proposed rule was published in the **Federal Register** on January 2, 2008, and the comment period was scheduled to expire on March 3, 2008.

DATES: Comments on the proposed rule must be received on or before March 18, 2008.

ADDRESSES: You may submit comments, identified by *docket number*, by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments via docket number USCBP–2007–0077.
- *Mail:* Border Security Regulations Branch, Office of International Trade, Customs and Border Protection, 1300 Pennsylvania Ave., NW., (Mint Annex), Washington, DC 20229.

Instructions: All submissions received must include the agency name and document number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of the proposed rule.

Docket: For access to the docket to read the notice of proposed rulemaking, background documents, or comments received, go to *http://www.regulations.gov*. Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Office of International Trade, Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: Richard Di Nucci, Office of Field Operations, (202) 344–2513.

SUPPLEMENTARY INFORMATION:

Background

Notice of Proposed Rulemaking

CBP published a notice of proposed rulemaking in the **Federal Register** (73 FR 90) on January 2, 2008, proposing to require both importers and carriers to submit additional information pertaining to cargo before the cargo is brought into the United States by vessel. Under the proposed rule, CBP must receive this information by way of a CBP-approved electronic data interchange system. The proposed regulations are specifically intended to fulfill the requirements of section 203 of the Security and Accountability for Every (SAFE) Port Act of 2006 and section 343(a) of the Trade Act of 2002, as amended by the Maritime Transportation Security Act of 2002.

The notice of proposed rulemaking invited the public to comment on the proposal. Comments on the proposed rule were requested on or before March 3, 2008.

Extension of Comment Period

In response to the proposed rule published in the **Federal Register**, CBP has received correspondence requesting an extension of the comment period. A decision has been made to grant an extension of 15 days. Comments are now due on or before March 18, 2008.

Dated: January 29, 2008.

Sandra L. Bell,

Executive Director, Regulations & Rulings, Office of International Trade.

[FR Doc. E8–1864 Filed 1–31–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF JUSTICE

28 CFR Part 58

[Docket No: EOUST 102]

RIN 1105–AB17

Application Procedures and Criteria for Approval of Nonprofit Budget and Credit Counseling Agencies by United States Trustees

AGENCY: Executive Office for United States Trustees (''EOUST''), Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking (''rule'') sets forth proposed procedures and criteria United States Trustees shall use when determining whether applicants seeking to become and remain approved nonprofit budget and credit counseling agencies satisfy all prerequisites of the United States Code, as implemented under this rule. Under current law every individual debtor shall have received adequate counseling from an approved nonprofit budget and credit counseling agency within 180 days before the date of filing for bankruptcy relief. The current law enumerates mandatory prerequisites and minimum standards applicants seeking to become approved nonprofit budget and credit counseling agencies must meet. Under this rule, United States Trustees will approve applicants for inclusion on publicly available agency lists in one or more federal judicial districts, if an applicant establishes it meets all the requirements of the United States Code, as implemented under this rule. After obtaining such an approval, a nonprofit budget and credit counseling agency shall be authorized to provide credit counseling in a federal judicial district during the time the agency remains approved.

DATES: Submit comments on or before April 1, 2008.

ADDRESSES: Comments on the rule may be submitted via *www.regulations.gov,* by telefax to (202) 305–8536, or by postal mail to Executive Office for United States Trustees (''EOUST''), 20 Massachusetts Ave., NW., 8th Floor, Washington, DC 20530. To ensure proper handling of comments, please reference ''Docket No. EOUST 102'' on all written and electronic correspondence.

FOR FURTHER INFORMATION CONTACT: Henry Hobbs, Acting Chief, Credit Counseling & Debtor Education Unit, at (202) 514–4100 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov.* Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter. If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment

may not be posted on *http://www.regulations.gov.*

Personal identifying information and confidential business information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph. Comments filed after the end of the comment period may be considered to the extent feasible.

Discussion of Rule

This rule implements those sections of Public Law No. 109–8, 119 Stat. 23, 37, 38 (April 20, 2005) codified at 11 U.S.C. 109(h)(1) and 111. Effective October 17, 2005, an individual may not be a debtor under title 11 of the United States Code unless during the 180-day period preceding the date of filing a bankruptcy petition, the individual receives adequate counseling from an approved nonprofit budget and credit counseling agency. 11 U.S.C. 109(h)(1) and 111. *See also* H.R. Rep. 109–31, pt. 1 at 2 (the Bankruptcy Code ''requires debtors to receive credit counseling before they can be eligible for bankruptcy relief so that they will make an informed choice about bankruptcy, its alternatives, and consequences'').

Section 111(b) of title 11, United States Code, governs the approval by United States Trustees of nonprofit budget and credit counseling agencies for inclusion under 11 U.S.C. 111(a)(1) on publicly available agency lists in one or more United States district courts. Section 111 of title 11 provides that, in applicable jurisdictions, a United States Trustee may approve an application to become an approved nonprofit budget and credit counseling agency only after the United States Trustee has thoroughly reviewed the applicant's (a) qualifications, and (b) services. 11 U.S.C. 111(b)(1). A United States Trustee has statutory authority to require an applicant to provide information with respect to such review. 11 U.S.C. 111(b)(1).

After completing that thorough review, a United States Trustee may approve a nonprofit budget and credit counseling agency only if the agency establishes that it fully satisfies all requisite standards. 11 U.S.C. 111(b). Among other things, an applicant must establish it will (a) provide qualified counselors, (b) maintain adequate provision for safekeeping and payment of client funds, (c) provide adequate counseling with respect to client credit problems, and (d) deal responsibly and effectively with other matters relating to the quality, effectiveness, and financial security of the services it provides. 11 U.S.C. 111(c)(1).

This proposed rule will implement those statutory requirements. By accomplishing that, the rule will help debtors obtain adequate counseling from competent credit counseling agencies, and help safeguard their funds. It also will provide an appropriate mechanism by which entities can apply for approval under section 111 of title 11 to become nonprofit budget and credit counseling agencies, and will enable such applicants to attempt to meet their burden of establishing they should be approved by United States Trustees under 11 U.S.C. 111.

This rule, once final, will supersede the provisions that address credit counseling agencies in EOUST's Interim Final Rule published on July 5, 2006 (71 FR 38076) entitled *Application Procedures and Criteria for Approval of Nonprofit Budget and Credit Counseling Agencies and Approval of Providers of a Personal Financial Management Instructional Course by United States Trustees* (''Interim Final Rule''). The credit counseling provisions are currently codified at 28 CFR 58.15, 58.16, and 58.17. Due to the necessity of quickly establishing a regulation to govern the credit counseling application process, EOUST promulgated the Interim Final Rule rather than a notice of proposed rulemaking. Based upon experience administering the Interim Final Rule, and upon consideration of comments received regarding the Interim Final Rule, EOUST promulgates this rule as a notice of proposed rulemaking in an effort to maximize public input. EOUST will respond to the comments to the Interim Final Rule and this rule when it publishes the final rule. EOUST will also publish another notice of proposed rulemaking that addresses providers of a financial management instructional course with a RIN number of 1105–AB31.

In an effort to make information more accessible and understandable, several changes to the Interim Final Rule are proposed in this rule, along with other changes to enhance consumer protections. Some of the more significant changes include the following: (1) Adding identification procedures for clients when accessing Internet or telephone counseling sessions; (2) establishing a limit for credit counseling fees to be presumed reasonable; (3) preserving clients' rights under 11 U.S.C. 502(k); (4) requiring agencies to provide additional counseling at no extra cost to clients when a debt repayment plan has been completed or terminated so that clients may file bankruptcy if they so choose; (5) providing guidance on agencies' responsibilities to individuals with limited English proficiency; and (6) requiring appropriate disclosures be made before providing services to clients, such as an agency's fee policy and the prohibition from receiving referral fees.

Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review'' section 1(b), The Principles of Regulation. The Department has determined that this rule is a ''significant regulatory action'' and, accordingly, this rule has been reviewed by the Office of Management and Budget (''OMB'').

The Department has also assessed both the costs and benefits of this rule as required by section 1(b)(6) and has made a reasoned determination that the benefits of this regulation justify its costs. The costs considered in this regulation include the required costs for the submission of an application. Costs considered also include the cost of establishing and maintaining the approved list in each federal judicial district. In an effort to minimize the burden on applicants, the application keeps the number of items on the application to a minimum.

The costs to an applicant will be minimal. The anticipated costs are the photocopying and mailing of the requested records, along with the salaries of the employees who complete the applications. Based upon the available information, experience with the credit counseling industry, and informal communications with credit counseling agencies, it is anticipated that this cost should equal approximately $500 per application for agencies. This cost is not new; it is the same cost that credit counseling agencies incurred when applying under the Interim Final Rule. Public comments regarding the cost to applicants in completing the application are requested.

Applicants that offer debt repayment plans must also obtain a surety bond in the amount of 2% of the agency's disbursements made during the previous 12 months from all trust accounts attributable to the federal judicial districts (or, if not feasible to determine, the states) in which the agency seeks approval from the United States Trustee or equal to the average daily balance maintained for the 6 months immediately prior to submission of the application in all trust accounts attributable to the federal judicial districts (or, if not feasible to

determine, the states) in which the agency seeks approval from the United States Trustee. In addition, credit counseling agencies that offer debt repayment plans must obtain employee fidelity insurance in a face amount equal to 50% of the surety bond. Credit counseling agencies are entitled to receive a credit for any state bond or employee fidelity insurance already obtained.

Although applicants may charge a fee for providing the credit counseling services in accordance with this rule, agencies must provide credit counseling without regard to a client's ability to pay the fee. Based upon the available information, current practice of many credit counseling agencies, experience with the credit counseling industry, and informal communications with credit counseling agencies, $50 is presumed to be a reasonable fee for credit counseling. The United States Government Accountability Office, after conducting a study on credit counseling, found that $50 was the typical rate charged by credit counseling agencies and that industry observers and consumer advocates considered this amount to be reasonable. Public comments as to the reasonableness of $50 for credit counseling are requested.

The amount presumed to be reasonable for credit counseling fees will be reviewed periodically, but not less than every four years, and the amount presumed to be reasonable will be published by notice in the **Federal Register** and identified on EOUST's Web site. In addition, all applicants must waive the fee if the client demonstrates a lack of ability to pay the fee, which shall be presumed if the client's household current income is less than 150% of the income of the official poverty line as identified by the United States Department of Health and Human Services applicable to a household of the same size.

The number of applicants that will ultimately apply is unknown, although EOUST believes that approximately 300 may ultimately apply to be approved credit counseling agencies. Currently, there are approximately 160 approved agencies. The annual hour burden on agencies is estimated to be 10 hours. This estimate is based on consultations with individuals in the credit counseling industry, and experience with applicants who completed the initial applications. Public comments regarding the annual hour burden on credit counseling agencies in completing the application are requested.

The EOUST consulted with the Federal Trade Commission (''FTC'') and with the Internal Revenue Service (''IRS'') in drafting this rule and the EOUST does not believe the rule has an adverse effect upon either agency.

The benefits of this rule include the development of standards that increase consumer protections, such as a limit on the presumption of reasonable fees, requirement that agencies provide adequate disclosures concerning agencies' policies, and the preservation of clients' rights under section 502(k). This rule also provides for greater supervision by the United States Trustee to ensure agencies employ proper procedures to safeguard client funds. These benefits justify its costs in complying with Congress' mandate that a list of approved agencies be established. Public Law No. 109–8, § 106(e)(1).

Executive Order 13132

This rule will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 to 3520, and assigned OMB control number 1105–0084 for form EOUST–CC1, the *''Application for Approval as a Nonprofit Budget and Credit Counseling Agency.''* The Department notes that full notice and comment opportunities were provided to the general public through the Paperwork Reduction Act process, and that the applications and associated requirements were modified to take into account the concerns of those who commented in this process.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Director has reviewed this rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. This certification is based upon experience in administering the Interim Final Rule where the surety bond and insurance requirements are less than 1% of gross revenue and also less than 1% of total expenditures for the large majority of credit counseling agencies considered to be small businesses.

Unfunded Mandates Reform Act of 1995

This rule does not require the preparation of an assessment statement in accordance with the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531. This rule does not include a federal mandate that may result in the annual expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of more than the annual threshold established by the Act ($100 million). Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801 *et seq.* This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, and innovation; or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Privacy Act Statement

Section 111 of title 11, United States Code, authorizes the collection of this information. The primary use of this information is by the United States Trustee to approve nonprofit budget and credit counseling agencies. The United States Trustee will not share this information with any other entity unless authorized under the Privacy Act, 5 U.S.C. 552a *et seq.* EOUST has published a System of Records Notice that delineates the routine use exceptions authorizing disclosure of information. 71 FR 59818, 59827 (Oct. 11, 2006), JUSTICE/UST–005, Credit Counseling and Debtor Education Files and Associated Records.

Public Law 104–134 (April 26, 1996) requires that any person doing business with the federal government furnish a Social Security Number or Tax Identification Number. This is an amendment to section 7701 of title 31, United States Code. Furnishing the Social Security Number, as well as other data, is voluntary, but failure to do so may delay or prevent action on the application.

List of Subjects in 28 CFR Part 58

Administrative practice and procedure, Bankruptcy, Credit and debts.

Accordingly, for the reasons set forth in the preamble, part 58 of chapter I of title 28 of the Code of Federal Regulations is proposed to be amended as follows:

PART 58—[AMENDED]

1. The authority citation for part 58 is revised to read as follows:

Authority: 5 U.S.C. 301, 552; 11 U.S.C. 109(h), 111, 521(b), 727(a)(11), 1141(d)(3); 1202; 1302;1328(g), 28 U.S.C. 509, 510, 586, 589b.

2. Add §§ 58.12, 58.13 and 58.14 to read as follows:

§ 58.12 Definitions.

(a) The following definitions apply to sections 58.12 through and including 58.24 of this part, as well as the applications and other materials agencies submit in an effort to establish they meet the requirements necessary to become an approved nonprofit budget and credit counseling agency.

(b) These terms shall have these meanings:

(1) The term ''accreditation'' means the accreditation that an accrediting organization bestows upon an agency because the accrediting organization has determined the agency meets or exceeds all the accrediting organization's standards;

(2) The term ''accrediting organization'' means either an entity that provides accreditation to agencies or provides certification to counselors, provided, however, that an accrediting organization shall:

(i) not be an agency or affiliate of any agency; and

(ii) be deemed acceptable by the United States Trustee;

(3) The term ''adequate counseling'' means the actual receipt by a client from an approved agency of all counseling services, and all other applicable services, rights, and protections specified in:

(i) 11 U.S.C. 109(h)(1);

(ii) 11 U.S.C. 111; and

(iii) this rule;

(4) The term ''affiliate of an agency'' includes:

(i) every entity that is an affiliate of the agency, as the term ''affiliate'' is defined in 11 U.S.C. 101(2), except that the word ''agency'' shall be substituted for the word ''debtor'' in 11 U.S.C. 101(2);

(ii) each of an agency's officers and each of an agency's directors; and

(iii) every relative of an agency's officers and every relative of an agency's directors;

(5) The term ''agency'' and the term ''budget and credit counseling agency'' shall each mean a nonprofit organization that is applying under this rule for United States Trustee approval to be included on a publicly available list in one or more United States district courts, as authorized by 11 U.S.C. 111(a)(1), and shall also mean, whenever appropriate, an approved agency;

(6) The term ''application'' means the application and related forms, including appendices, approved by the Office of Management and Budget as form EOUST–CC1, *Application for Approval as a Nonprofit Budget and Credit Counseling Agency*, as it shall be amended from time to time;

(7) The term ''approved agency'' means an agency currently approved by a United States Trustee under 11 U.S.C. 111 as an approved nonprofit budget and credit counseling agency eligible to be included on one or more lists maintained under 11 U.S.C. 111(a)(1);

(8) The term ''approved list'' means the list of agencies currently approved by a United States Trustee under 11 U.S.C. 111 as currently published on the United States Trustee Program's Internet site on the United States Department of Justice's Internet site;

(9) The term ''audited financial statements'' means financial reports audited by independent certified public accountants in accordance with generally accepted accounting principles as defined by the American Institute of Certified Public Accountants;

(10) The term ''certificate'' means the certificate identified in 11 U.S.C. 521(b)(1) that an approved agency shall provide to a client after the client completes counseling services;

(11) The term ''client'' means an individual who seeks, receives or has received counseling services from an approved agency;

(12) The term ''counseling services'' means all counseling required by 11 U.S.C. 109(h) and 111, and this rule including, without limitation, services that are typically of at least 60 minutes in duration and that shall at a minimum include:

(i) Performing on behalf of, and providing to, each client a written analysis of each client's current financial condition, which analysis shall include a budget analysis, consideration of all alternatives to resolve a client's credit problems, discussion of the factors that caused such financial condition, and identification of all methods by which the client can develop a plan to respond to the financial problems without incurring negative amortization of debt; and

(ii) Providing each client the opportunity to have the agency negotiate an alternative payment schedule with regard to each unsecured consumer debt under terms as set forth in 11 U.S.C. 502(k) or, if the client accepts this option and the agency is unable to provide this service, the agency shall refer the client to another approved agency in the appropriate federal judicial district that provides it;

(13) The term ''counselor certification'' means certification of a counselor by an accrediting organization because the accrediting organization has determined the counselor meets or exceeds all the accrediting organization's standards for counseling services or related areas, such as personal finance, budgeting, or credit or debt management;

(14) The term ''criminal background check'' means a report generated by the Federal Bureau of Investigation disclosing the entire criminal history record, if any, of the counselor for whom the criminal background check is sought. Whenever the Federal Bureau of Investigation does not have access to, or provides, less than the entire state criminal history record of the counselor, then the term ''criminal background check'' shall also include the entire state criminal history record, if any, of every state law enforcement agency where the counselor has resided for any part of the immediately preceding five years. If a criminal background check is not available from the Federal Bureau of Investigation and is not authorized by state law in the residential state of the employee, the agency shall instead obtain at least every 5 years a sworn statement from each counselor attesting to whether the counselor has been convicted of a felony, or a crime involving fraud, dishonesty, or false statements;

(15) The term ''debt repayment plan'' means any written document suggested, drafted, or reviewed by an approved agency that either proposes or implements any mechanism by which a client would make payments to any creditor or creditors if, during the time any such payments are being made, that creditor or those creditors would forbear from collecting or otherwise enforcing their claim or claims against the client; provided, however, that any such written document shall not constitute a debt repayment plan if the client would incur a negative amortization of debt under it;

(16) The term ''Director'' means the person designated or acting as the Director of the Executive Office for United States Trustees;

(17) The term ''entity'' shall have the meaning given that term in 11 U.S.C. 101(15);

(18) The term ''fair share'' means payments by a creditor to an approved agency for administering a debt repayment plan;

(19) The terms ''fee'' and ''fee policy'' each mean the aggregate of all fees, contributions, and payments an approved agency charges clients for providing counseling services; ''fee policy'' shall also mean the objective criteria the agency uses in determining whether to waive or reduce any fee, contribution, or payment;

(20) The term ''final decision'' means the decision issued by the Director that reviews the United States Trustee's decision either to deny an agency's application or to remove an agency from the approved list;

(21) The term ''financial benefit'' means any interest equated with money or its equivalent, including, but not limited to, stock, bonds, other investments, income, goods, services, or receivables;

(22) The term ''governmental unit'' shall have the meaning given that term in 11 U.S.C. 101(27);

(23) The term ''independent contractor'' means a person or entity who provides any good or service to an approved agency other than as an employee and as to whom the approved agency does not:

(i) Direct or control the means or methods of delivery of the service or goods being provided;

(ii) Make financial decisions concerning the business aspects of the goods or services being provided; and

(iii) Have any common employees;

(24) The term ''languages offered'' means every language other than English in which an approved agency provides counseling services;

(25) The term ''legal advice'' shall have the meaning given that term in 11 U.S.C. 110(e)(2);

(26) The term ''limited English proficiency'' means, alternatively:

(i) An inability to speak, read, write, or understand the English language; or

(ii) The use primarily of a language other than English in a person's daily affairs;

(27) The term ''locator'' means any entity that assists a prospective client find an approved agency or agencies for the purpose of receiving counseling services, unless such entity is the approved agency proposing to provide counseling services to the prospective client;

(28) The term ''material change'' means, alternatively, any change:

(i) In the name, structure, principal contact, management, staffing, physical location, counseling services, fee policy, or method of delivery of an approved agency; or

(ii) That renders inapplicable, inaccurate, incomplete, or misleading any statement an agency or approved agency previously made:

(A) In its application or related materials; or

(B) To the United States Trustee;

(29) The term ''median family income'' shall have the meaning given that term in 11 U.S.C. 101(39A);

(30) The term ''method of delivery'' means one or more of the 3 methods by which an approved agency can provide some component of counseling services to its clients, including:

(i) ''in person'' delivery, which applies when a client primarily receives counseling services at a physical location with a credit counselor physically present in that location, and with the credit counselor providing oral and/or written communication to the client at the facility;

(ii) ''telephone'' delivery, which applies when a client primarily receives counseling services by telephone; and

(iii) ''Internet'' delivery, which applies when a client primarily receives counseling services through an Internet website;

(31) The term ''nonprofit'' means, alternatively:

(i) An entity validly organized as a not-for-profit entity under applicable state or federal law, if that entity operates as a not-for-profit entity in full compliance with all applicable state and federal law; or

(ii) A qualifying governmental unit;

(32) The term ''notice'' in 28 CFR 58.24 means the written communication from the United States Trustee to an agency that its application to become an approved agency has been denied or to an approved agency that it is being removed from the approved list;

(33) The term ''qualifying government unit'' means any governmental unit that, were it not a governmental unit, would qualify for tax-exempt status under 26 U.S.C. 501(c)(3), or would qualify as a nonprofit entity under applicable state law;

(34) The term ''referral fees'' means money or any other valuable consideration paid or transferred between an approved agency and another entity in return for that entity, directly or indirectly, identifying, referring, securing, or in any other way encouraging any client or potential client to receive counseling services from the approved agency; provided, however, that ''referral fees'' shall not include fees paid to:

(i) The agency under a fair share agreement; or

(ii) Any locator;

(35) The term ''relative'' shall have the meaning given that term in 11 U.S.C. 101(45);

(36) The term ''request for review'' means the written communication from an agency to the Director seeking review of the United States Trustee's decision either to deny the agency's application or to remove the agency from the approved list;

(37) The term ''state'' means state, commonwealth, district, or territory of the United States;

(38) The term ''tax waiver'' means a document sufficient to permit the Internal Revenue Service to release directly to the United States Trustee information about an agency;

(39) The term ''trust account'' means an account with a federally insured depository institution that is separated and segregated from operating accounts, which an approved agency shall maintain in its fiduciary capacity for the purpose of receiving and holding client funds entrusted to the approved agency; and

(40) The term ''United States Trustee'' means, alternatively:

(i) The Executive Office for United States Trustees;

(ii) A United States Trustee appointed under 28 U.S.C. 581;

(iii) A person acting as a United States Trustee;

(iv) An employee of a United States Trustee; or

(v) Any other entity authorized by the Attorney General to act on behalf of the United States under this rule.

§ 58.13 Procedures all agencies shall follow when applying to become approved agencies.

(a) An agency applying to become an approved agency shall obtain an application, including appendices, from the United States Trustee.

(b) The agency shall complete the application, including its appendices, and attach the required supporting documents requested in the application.

(c) The agency shall submit the original of the completed application, including completed appendices and the required supporting documents, and one additional copy of those, to the United States Trustee at the address specified on the application form.

(d) The application shall be signed by an agency representative who is authorized under applicable law to sign on behalf of the applying agency.

(e) The signed application, completed appendices, and required supporting documents shall be accompanied by a writing, signed by the signatory of the application and executed on behalf of the signatory and the agency, certifying the application does not:

(1) Falsify, conceal, or cover up by any trick, scheme or device a material fact;

(2) Make any materially false, fictitious, or fraudulent statement or representation; or

(3) Make or use any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry.

(f) The United States Trustee shall not consider an application that:

(1) Is incomplete;

(2) Fails to include the completed appendices or all of the required supporting documents; or

(3) Is not accompanied by the certification identified in the preceding subsection.

(g) The United States Trustee shall not consider an application on behalf of an agency if:

(1) It is submitted by any entity other than the agency; or

(2) Either the application or the accompanying certification is executed by any entity other than an agency representative who is authorized under applicable law to sign on behalf of the agency.

(h) By the act of submitting an application, an agency consents to the release and disclosure of its name and contact information on the approved list should its application be approved.

§ 58.14 Automatic expiration of agencies' status as approved agencies.

(a) Except as provided in 28 CFR 58.15(c), if an approved agency was not an approved agency immediately prior to the date it last obtained approval to be an approved agency, such an approved agency shall cease to be an approved agency 6 months from the date on which it was approved unless the United States Trustee approves an additional 1-year period.

(b) Except as provided in 28 CFR 58.15(c), if an approved agency was an approved agency immediately prior to the date it last obtained approval to be an approved agency, such an agency shall cease to be an approved agency 1 year from the date on which it was last approved to be an approved agency unless the United States Trustee approves an additional 1-year period.

3. Sections 58.15 through 58.17 are revised to read as follows.

§ 58.15 Procedures all approved agencies shall follow when applying for approval to act as an approved agency for an additional 1-year period.

(a) To be considered for approval to act as an approved agency for an additional 1-year term, an approved agency shall reapply by complying with all the requirements specified for agencies under 11 U.S.C. 109(h)(1) and 111, and under this rule.

(b) Such an agency shall apply no later than 45 days prior to the expiration of its six-month probationary period or annual period in order to be considered for approval for an additional 1-year period, unless a written extension is granted by the United States Trustee.

(c) An approved agency that has complied with all prerequisites for applying to act as an approved agency for an additional 1-year period may continue to operate as an approved agency while its application is under review by the United States Trustee, so long as either the application for an additional 1-year period was timely submitted, or an agency receives a written extension from the United States Trustee.

§ 58.16 Renewal for an additional 1-year period.

If an approved agency's application for an additional 1-year period is approved, such renewal period shall begin to run from the later of:

(a) The day after the expiration date of the immediately preceding approval period; or

(b) The actual date of approval of such renewal by the United States Trustee.

§ 58.17 Mandatory duty of approved agencies to notify United States Trustees of material changes.

(a) An approved agency shall immediately notify the United States Trustee in writing of any material change.

(b) An approved agency shall immediately notify the United States Trustee in writing of any failure by the approved agency to comply with any standard or requirement specified in 11 U.S.C. 109(h) or 111, this rule, or the terms under which the United States Trustee approved it to act as an approved agency.

(c) An approved agency shall immediately notify the United States Trustee in writing of any of the following events:

(1) Notification by the Internal Revenue Service or by a state or local taxing authority that the approved agency has been selected for audit or examination regarding its tax-exempt status, or any notification of a compliance check by the Internal Revenue Service or by a state or local taxing authority;

(2) Revocation or termination of the approved agency's tax-exempt status by any governmental unit or by any judicial officer;

(3) Cessation of business by the approved agency or by any office of the agency, or withdrawal from any federal judicial district(s) where the approved agency is approved;

(4) Any investigation of, or any administrative or judicial action brought against, the approved agency by any governmental unit;

(5) Termination or cancellation of any surety bond or fidelity insurance;

(6) Any administrative or judicial action brought by any entity that seeks recovery against a surety bond or fidelity insurance;

(7) Any action by a governmental unit or a court to suspend or revoke the approved agency's articles of incorporation, or any license held by the approved agency, or any authorization necessary to engage in business;

(8) A suspension, or action to suspend, any accreditation held by the approved agency, or any withdrawal by the approved agency of any application for accreditation, or any denial of any application of the approved agency for accreditation;

(9) A change in the approved agency's nonprofit status under any applicable law; and

(10) Any change in the banks or financial institutions used by the agency.

(d) An agency shall notify the United States Trustee in writing if any of the changes identified in paragraphs (a) through (c) of this section occur while its application to become an approved agency is pending before the United States Trustee.

(e) An approved agency whose name or other information appears incorrectly on the approved list shall immediately submit a written request to the United States Trustee asking that the information be corrected.

4. Sections 58.18 through 58.24 are added to read as follows:

§ 58.18 Mandatory duty of approved agencies to obtain prior permission from the United States Trustee before taking certain actions.

(a) By accepting the designation to act as an approved agency, an agency agrees to obtain approval from the United States Trustee, prior to making any of the following changes:

(1) Cancellation or change in amount of the surety bond or employee fidelity bond or insurance;

(2) The engagement of an independent contractor to provide counseling

services or to have access to, possession of, or control over client funds;

(3) Any increase in the fees, contributions, or payments received from clients for counseling services or a change in the agency's fee policy;

(4) Expansion into additional federal judicial districts;

(5) Any changes to the method of delivery the approved agency employs to provide counseling services; or

(6) Any changes in the approved agency's counseling services.

(b) An agency applying to become an approved agency shall also obtain approval from the United States Trustee before taking any action specified in paragraph (a) of this section. It shall do so by submitting an amended application. The agency's amended application shall be accompanied by a contemporaneously executed writing, signed by the signatory of the application, that makes the certifications specified in 28 CFR 58.13(e).

(c) An approved agency shall not transfer or assign its United States Trustee approval to act as an approved agency.

§ 58.19 Criteria agencies shall satisfy to become and remain approved agencies.

(a) To become an approved agency, an agency must affirmatively establish, to the satisfaction of the United States Trustee, that the agency at the time of approval:

(1) Satisfies every requirement of this rule; and

(2) Provides adequate counseling to its clients.

(b) To remain an approved agency, an approved agency shall affirmatively establish, to the satisfaction of the United States Trustee, that the approved agency:

(1) Has satisfied every requirement of this rule;

(2) Has provided adequate counseling to its clients; and

(3) Would continue to satisfy both paragraphs (b)(1) and (2) of this section in the future.

§ 58.20 Minimum qualifications agencies shall meet to become and remain approved agencies.

To meet the minimum qualifications set forth in 28 CFR 58.19, and in addition to the other requirements set forth in this rule, agencies and approved agencies shall comply with paragraphs (a) through (p) of this section on a continuing basis:

(a) *Compliance with all laws.* An agency shall comply with all applicable laws and regulations of the United States and each state in which the agency provides counseling services including, without limitation, all laws governing licensing and registration.

(b) *Prohibition on Legal Advice.* An agency shall not provide legal advice.

(c) *Structure and organization.* An agency shall:

(1) Be lawfully organized and operated as a nonprofit entity; and

(2) Have a board of directors the majority of which:

(i) are not relatives;

(ii) are not employed by such agency; and

(ii) will not directly or indirectly benefit financially from the outcome of the counseling services provided by such agency.

(d) *Ethical standards.* An agency shall:

(1) Not engage in any conduct or transaction, other than counseling services, that generates a direct or indirect financial benefit for any member of the board of directors or trustees, officer, supervisor, or any relative thereof;

(2) Ensure no member of the board of directors or trustees, officer, or supervisor receives any commissions, incentives, bonuses, or benefits (monetary or non-monetary) of any kind that are directly or indirectly based on the financial or legal decisions any client or potential client makes after requesting counseling services;

(3) Ensure no member of the board of directors or trustees, officer or supervisor is a relative of an employee of the United States Trustee, a trustee appointed under 11 U.S.C. 586(a)(1) or (b) for any Federal judicial district where the agency is providing or is applying to provide counseling services, a federal judge in any Federal judicial district where the agency is providing or is applying to provide counseling services, a Federal court employee in any Federal judicial district where the agency is providing or is applying to provide counseling services, or a certified public accountant that audits the agency's trust account;

(4) Not enter into any referral agreement or receive any financial benefit that involves the agency paying to or receiving from any entity or person referral fees for the referral of clients to or by the agency, except payments:

(i) Under a fair share agreement; or

(ii) To any locator;

(5) Not enter into agreements involving counseling services that create a conflict of interest; and

(6) Not provide counseling services to a client with whom the agency has a lender-borrower relationship.

(e) *Use of credit counselors.* An agency shall have a credit counselor provide the counseling services to each of the agency's clients. The credit counselor shall interact with the client regarding the accuracy of the information obtained from the client and the alternatives available to the client for dealing with his or her current financial situation, including the plan developed to address such financial situation.

(f) *Credit counselor training, certification and experience.* An agency shall:

(1) Use only counselors who possess adequate experience providing credit counseling, which shall mean that each counselor either:

(i) Holds a counselor certification and who have complied with all continuing education requirements necessary to maintain their counselor certification; or

(ii) Has successfully completed a course of study and worked a minimum of 6 months in a related area such as personal finance, budgeting, or credit or debt management. A course of study shall include training in counseling skills, personal finance, budgeting, or credit or debt management. A counselor shall also receive annual continuing education in the areas of counseling skills, personal finance, budgeting, or credit or debt management;

(2) Demonstrate adequate experience, background, and quality in providing credit counseling, which shall mean that, at a minimum, the agency shall either:

(i) Have experience in providing credit counseling for the 2 years immediately preceding the relevant application date; or

(ii) For each office providing counseling services, employ at least one supervisor who has met the qualifications in paragraph (f)(2)(i) of this section for no less than 2 of the 5 years preceding the relevant application date; and

(3) If offering any component of counseling services by a telephone or Internet method of delivery, use only counselors who, in addition to all other requirements, demonstrate sufficient experience and proficiency in providing such counseling services by those methods of delivery, including proficiency in employing verification procedures to ensure the person receiving the counseling services is the client, and to determine whether the client has completely received counseling services.

(g) *No variation in services.* An agency shall ensure that the type and quality of services do not vary based on a client's decision whether to obtain a certificate in lieu of other options that may or may not be suggested by the agency.

(h) *Use of the telephone and the Internet to deliver a component of client services.* An agency shall:

(1) Not provide any client diminished counseling services because the client receives any portion of those counseling services by telephone or Internet;

(2) Confirm the identity of the client before receiving counseling services by telephone or Internet by:

(i) Obtaining one or more unique personal identifiers from the client and assigning an individual access code, user ID, or password at the time of enrollment; and

(ii) Requiring the client to provide the appropriate access code, user ID, or password, and also one or more of the unique personal identifiers during the course of delivery of the counseling services.

(i) *Services to hearing and hearing-impaired clients and potential clients.* An agency shall furnish toll-free telephone numbers for both hearing and hearing-impaired clients and potential clients whenever telephone communication is required. The agency shall provide telephone amplification, sign language services, or other communication methods for hearing-impaired clients or potential clients.

(j) *Language services to clients and potential clients.* An agency shall communicate, in writing and orally, with clients and potential clients in the languages of the major population groups served by the agency. The agency shall provide or arrange for bilingual personnel, interpreters, or the use of communication technology, as needed, in such languages. The agency shall inform any client or potential client with limited English proficiency of the languages offered in providing counseling services. Whenever an agency cannot provide counseling services to a client or a potential client due to a person's limited English proficiency, the agency shall employ its best efforts to expeditiously direct such person to one or more approved agencies that can provide counseling services in the language of the client or potential client's choice.

(k) *Services to clients and potential clients with special needs.* An agency that provides any portion of its counseling in person shall comply with all federal, state and local laws governing facility accessibility. An agency shall also provide or arrange for communication assistance for clients or potential clients with special needs who have difficulty making their service needs known.

(l) *Mandatory disclosures to clients and potential clients.* Prior to providing any information to or obtaining any information from a client or potential client, and prior to rendering any counseling service, an agency shall disclose:

(1) The agency's fee policy;

(2) The agency's policies enabling clients to obtain counseling services for free or at reduced rates based upon the client's lack of ability to pay;

(3) The agency's funding sources;

(4) The counselors' qualifications;

(5) The potential impacts on credit reports of all alternatives the agency may discuss with the client;

(6) The agency's policy prohibiting it from paying or receiving referral fees for the referral of clients to or by the agency, except:

(i) Under a fair share agreement; or

(ii) To any locator;

(7) The agency's obligation to provide a certificate to the client promptly upon the completion of counseling services;

(8) The client's right to negotiate an alternative payment schedule with regard to each unsecured consumer debt under terms as set forth in 11 U.S.C. 502(k);

(9) The fact that the agency might disclose client information to the United States Trustee in connection with the United States Trustee's oversight of the agency, or during the investigation of complaints, during on-site visits, or during quality of service reviews;

(10) The fact that the United States Trustee has reviewed only the agency's counseling services, and the fact that the United States Trustee has neither reviewed nor approved any other services the agency provides to clients; and

(11) The fact that a client will receive a certificate only if the client completes counseling services.

(m) *Complaint Procedures.* An agency shall employ complaint procedures that adequately respond to clients' concerns.

(n) *Background checks.* An agency shall:

(1) Conduct a criminal background check at least every 5 years for each person providing credit counseling, and

(2) Not employ anyone as a counselor who has been convicted of any felony, or any crime involving fraud, dishonesty, or false statements, unless the United States Trustee determines circumstances warrant a waiver of this prohibition against employment.

(o) *Agency records.* An agency shall prepare and retain records that enable the United States Trustee to evaluate whether the agency is providing adequate counseling and acting in compliance with all applicable laws and this rule. All records, including documents bearing original signatures, shall be maintained in either hard copy form or electronically in a format widely available commercially. Records that the agency shall prepare and retain for a minimum of two years, and permit review by the United States Trustee upon request, shall include:

(1) Upon the filing of an application for probationary approval, all information requested by the United States Trustee as an estimate, projected to the end of the probationary period, in the form requested by the United States Trustee;

(2) After probationary or annual approval, and for so long as the agency remains on the approved list, semi-annual reports of historical data (for the periods ending June 30 and December 31 of each year), of the type and in the form requested by the United States Trustee; these reports shall be submitted within 30 days of the end of the applicable periods specified in this paragraph;

(3) Annual audited financial statements, including the audited balance sheet, statement of income and retained earnings, and statement of changes in financial condition;

(4) Books, accounts, and records to provide a clear and readily understandable record of all business conducted by the agency, including without limitation, copies of all correspondence with or on behalf of the client, including the contract between the agency and the client and any amendments thereto;

(5) Records concerning the delivery of services to clients and potential clients with limited English proficiency and special needs, and to hearing-impaired clients and potential clients, including records:

(i) Of the number of such clients;

(ii) Of which languages are offered;

(iii) Detailing the agency's best efforts to provide services to such clients and potential clients; and

(iv) Supporting any justification if the agency did not provide services to such clients or potential clients;

(6) Records concerning the delivery of counseling services to clients for free or at reduced rates based upon the client's lack of ability to pay, including records of the number of such clients and the extent to which the agency voluntarily waived all or part of its fees under 28 CFR 58.21(c);

(7) Records of complaints and the agency's responses thereto;

(8) Records that enable the agency to verify the authenticity of certificates their clients file in bankruptcy cases; and

(9) Records that enable the agency to issue replacement certificates.

(p) *Additional minimum requirements*. An agency shall:

(1) Provide records to the United States Trustee upon request;

(2) Cooperate with the United States Trustee by allowing scheduled and unscheduled on-site visits, complaint investigations, or other reviews of the agency's qualifications to be an approved agency;

(3) Cooperate with the United States Trustee by promptly responding to questions or inquiries from the United States Trustee;

(4) Assist the United States Trustee in identifying and investigating suspected fraud and abuse by any party participating in the credit counseling or bankruptcy process;

(5) Not exclude any client or creditor from a debt repayment plan because the creditor declines to make a fair share contribution to the agency;

(6) Take no action that would limit, inhibit, or prevent a client from bringing an action or claim for damages against an agency under any applicable law, including but not limited to 11 U.S.C. 111(g)(2);

(7) Refer clients and prospective clients for counseling services only to agencies that have been approved by a United States Trustee to provide such services;

(8) Comply with the United States Trustee's directions on approved advertising, including without limitation those set forth in appendix A to the application;

(9) Not disclose or provide to a credit reporting agency any information concerning whether a client has received or sought instruction concerning credit counseling or personal financial management from an agency;

(10) Not expose the client to commercial advertising as part of or during the client's receipt of any counseling services, and never market or sell financial products or services during the counseling session; provided, however, this provision does not prohibit an agency from generally discussing all available financial products and services;

(11) Not sell information about any client or potential client to any third party without the client or potential client's prior written permission; and

(12) If the agency is tax-exempt, submit a completed and signed tax waiver permitting and directing the Internal Revenue Service to provide the United States Trustee with access to the Internal Revenue Service's files relating to the agency.

§ 58.21 Additional minimum requirements to become and remain approved agencies relating to fees.

(a) If a fee for, or relating to, credit counseling services is charged by an agency, such fee shall be reasonable:

(1) A fee of $50 or less for credit counseling services is presumed to be reasonable and an agency need not obtain prior approval of the United States Trustee to charge such a fee;

(2) A fee exceeding $50 for credit counseling services is not presumed to be reasonable and an agency must obtain prior approval from the United States Trustee to charge such a fee. The agency bears the burden of establishing that its proposed fee is reasonable. At a minimum, the agency must demonstrate that its cost for delivering such services justify the fee; and

(3) The United States Trustee shall review the amount of the fee set forth in paragraphs (a)(1) and (2) of this section periodically, but not less than every 4 years, to determine the reasonableness of the fee. Fee amounts and any revisions thereto shall be determined by current costs, using a method of analysis consistent with widely accepted accounting principles and practices, and calculated in accordance with the provisions of federal law as applicable. Fee amounts and any revisions thereto shall be published in the **Federal Register**.

(b) An agency shall waive the fee whenever a client demonstrates a lack of ability to pay the fee. A client shall be deemed to have demonstrated a lack of ability to pay the fee if the client's household current income is less than 150% of the income of the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) as identified in the Poverty Guidelines updated periodically in the **Federal Register** by the United States Department of Health and Human Services applicable to a family or household of the size involved in the fee decision.

(c) Notwithstanding the requirements of paragraph (b) of this section, an agency may also waive fees based upon other considerations, including, but not limited to:

(1) The client's net worth;

(2) The percentage of the client's income from government assistance programs;

(3) Whether the client is receiving pro bono legal services in connection with a filed or anticipated bankruptcy case; or

(4) If the combined current monthly income, as defined in 11 U.S.C. 101(10A), of the client and his or her spouse, when multiplied times 12, is equal to or less than the amounts set forth in 11 U.S.C. 707(b)(7).

(d) An agency shall not link a client or potential client's purchase of counseling services to the purchase of any other service offered by the agency.

§ 58.22 Additional minimum requirements to become and remain approved agencies relating to certificates.

(a) An approved agency shall deliver a certificate only to the client who took and completed the counseling services, except that an approved agency shall instead deliver a certificate to the attorney of a client who took and completed counseling services if the client specifically requests that in writing.

(b) An approved agency shall attach to the certificate:

(1) The client's debt repayment plan (if any); and

(2) If the counselor determines a viable alternative to bankruptcy is available to the client to resolve his or her credit problems, the client's budget analysis.

(c) An approved agency shall deliver a certificate to a client no later than one business day after the client completed counseling services.

(d) If an approved agency provides other financial counseling in addition to counseling services, and such other financial counseling satisfies the requirements for counseling services specified in 11 U.S.C. 109(h) and 111, and this rule, a person completing such other financial counseling is a client and the approved agency shall deliver a certificate to the client no later than one business day after the client's request. The approved agency shall not charge the client any additional fee except any separate fee charged for the issuance of the certificate, in accordance with paragraph (g) of this section.

(e) An approved agency shall issue certificates only in the form approved by the United States Trustee, and shall generate the form using the Certificate Generating System maintained by the United States Trustee.

(f) An approved agency shall have sufficient computer capabilities to issue certificates from the United States Trustee's Certificate Generating System.

(g) An approved agency shall not charge a separate fee for the issuance of a certificate or replacement certificate, unless:

(1) The approved agency has disclosed such fee in writing before any counseling services are provided and before any payment is made by the client;

(2) The approved agency obtains the written consent of the client before the client commences receiving counseling services; and

(3) Such fee is reasonable and otherwise complies with the waiver requirements of 28 CFR 58.21.

(h) An approved agency shall issue a certificate to each client who completes counseling services. Spouses receiving counseling services jointly shall each receive a certificate.

(i) An approved agency shall issue a replacement certificate to a client who requests one.

(j) An approved agency shall not file certificates with the court.

(k) Only an authorized officer, supervisor or employee of an approved agency shall issue a certificate, and an approved agency shall not transfer or delegate authority to issue certificates to any other entity.

(l) An approved agency shall implement internal controls sufficient to prevent unauthorized issuance of certificates.

(m) An approved agency shall ensure the signature affixed to a certificate is that of an officer, supervisor or employee authorized to issue the certificate, in accordance with paragraph (k) of this section, which signature shall be either:

(1) An original signature; or

(2) In a format approved for electronic filing with the court (most typically in the form /s/ name of counselor); however, whenever a certificate is prepared for filing electronically with the court, a certificate with the counselor's original signature shall also be provided to the client.

(n) An approved agency shall affix to the certificate the exact name under which the approved agency is incorporated or organized.

(o) An approved agency shall identify on the certificate:

(1) The specific Federal judicial district requested by the client;

(2) Whether counseling services were provided in person, by telephone or via the Internet;

(3) The date on which counseling services were completed by the client; and

(4) The name of the counselor that provided the counseling services.

(p) An approved agency shall affix the client's full, accurate name to the certificate. If the counseling services are obtained by a client through a duly authorized representative, the certificate shall also set forth the name of the legal representative and legal capacity of that representative.

(q) If an individual enters into a debt repayment plan after completing credit counseling, upon the client's request after the completion or termination of the debt repayment plan, the approved agency shall:

(1) Provide such additional credit counseling as is necessary at such time to comply with the requirements specified in 11 U.S.C. 109(h) and 111, and this rule, including reviewing the client's current financial condition and counseling the client regarding the alternatives to resolve the client's credit problems;

(2) Deliver a certificate to the client no later than one business day after the client completed such additional counseling; and

(3) Not charge the client any additional fee except any separate fee charged for the issuance of the certificate, in accordance with paragraph (g) of this section.

§ 58.23 Additional financial requirements and bonding and insurance requirements for agencies offering debt repayment plans.

If an agency offers debt repayment plans, an agency shall possess adequate financial resources to provide continuing support services for budgeting plans over the life of any repayment plan, and provide for the safekeeping of client funds, which shall include:

(a) Depositing all client funds into a deposit account, held in trust, at a federally insured depository institution. Each such trust account shall be established in a fiduciary capacity and shall be in full compliance with federal law such that each client's funds shall be protected by federal deposit insurance up to the maximum amount allowable by federal law.

(b) Keeping and maintaining books, accounts, and records to provide a clear and readily understandable record of all business conducted by the agency, including without limitation, all of the following:

(1) Separate files for each client's account that include copies of all correspondence with or on behalf of the client, including:

(i) All agreements with all entities, including the contract between the agency and the client and any amendments thereto;

(ii) The analysis of the client's budget;

(iii) Correspondence between the agency and the client's creditors;

(iv) The notice given to creditors of any debt repayment plan; and

(v) All written statements of account provided to the client and subsidiary ledgers concerning any debt repayment plan;

(2) A trust account general ledger reflecting all deposits to and disbursements from all trust accounts, which shall be kept current at all times;

(3) A reconciliation of the trust accounts, prepared at least once a month; and

(4) An operating account general ledger reflecting all of the agency's financial transactions involving the agency's operating account, which shall be kept current at least on a monthly basis.

(c) Allowing an independent certified public accounting firm to audit the trust accounts annually in accordance with generally accepted accounting principles as defined by the American Institute of Certified Public Accountants and any Statement of Work prepared by the United States Trustee, which audit shall include:

(1) A report of all trust account activity including:

(i) The balance of each trust account at the beginning and end of the period;

(ii) The total of all receipts from clients and disbursements to creditors during the reporting period;

(iii) The total of all disbursements to the agency; and

(iv) The reconciliation of each trust account;

(2) A report of all exceptions (*e.g.*, discrepancies, irregularities, and errors) found, regardless of materiality; and

(3) An evaluation of the agency's trust account internal controls and its computer operations to determine whether it provides a reasonable assurance that the trust funds are safeguarded against loss from unauthorized use or disposition.

(d) Obtaining a surety bond payable to the United States, as follows:

(1) Subject to the minimum amount of $5,000, the amount of such surety bond shall be the lesser of:

(i) 2% of the agency's disbursements made during the previous 12 months from all trust accounts attributable to the federal judicial districts (or, if not feasible to determine, the states) in which the agency seeks approval from the United States Trustee; or

(ii) Equal to the average daily balance maintained for the 6 months immediately prior to submission of the application in all trust accounts attributable to the federal judicial districts (or, if not feasible to determine, the states) in which the agency seeks approval from the United States Trustee;

(2) The agency may receive an offset or credit against the surety bond amount determined under paragraph (d)(1) of this section if:

(i) The agency has previously obtained a surety bond, or similar cash, securities, insurance (other than employee fidelity insurance), or letter of

credit in compliance with the licensing requirements of the state in which the agency seeks approval from the United States Trustee;

(ii) Such surety bond, or similar cash, securities, insurance (other than employee fidelity insurance), or letter of credit provides protection for the clients of the agency;

(iii) Such surety bond, or similar cash, securities, insurance (other than employee fidelity insurance), or letter of credit, is written in favor of the state or the appropriate state agency; and

(iv) The amount of the offset or credit shall be the lesser of:

(A) The principal amount of such surety bond, or similar cash, securities, insurance (other than employee fidelity insurance), or letter of credit; or

(B) The surety bond amount determined under paragraph (d)(1) of this section;

(3) If an agency has contracted with an independent contractor to administer any part of its debt repayment plans:

(i) Except as provided in paragraphs (d)(3)(ii) and (iii) of this section, the independent contractor shall:

(A) Be an approved agency; or

(B) If the independent contractor is not an approved agency, then the independent contractor shall:

(*1*) Be specifically covered under the agency's surety bond required under paragraph (d)(1) of this section; or

(*2*) Have a surety bond that meets the requirements of paragraph (d)(1) of this section; and

(C) Agree in writing to allow the United States Trustee to audit the independent contractor's trust accounts for the debt repayment plans administered on behalf of the agency and to review the independent contractor's internal controls and administrative procedures;

(ii) If the independent contractor holds funds for transmission for 5 days or less, then the amount of the required surety bond under paragraph (d)(3)(i)(B) of this section shall be $500,000;

(iii) If the independent contractor performs only electronic fund transfers on the agency's behalf, then the independent contractor need not satisfy the requirements of paragraph (d)(3)(i) of this section during such time as the independent contractor is authorized by the National Automated Clearing House Association to participate in the Automated Clearing House system.

(e) Obtaining either adequate employee bonding or fidelity insurance, as follows:

(1) Subject to the minimum amount set forth below, the amount of such bonding or fidelity insurance shall be 50% of the surety bond amount calculated under paragraph (d)(1) of this section, prior to any offset or credit that the agency may receive under paragraph (d)(2) of this section; provided, however, that at a minimum, the employee bond or fidelity insurance must be $5,000;

(2) An agency may receive an offset or credit against the employee bond or fidelity insurance amount determined under paragraph (e)(1) of this section if:

(i) The agency has previously obtained an employee bond or fidelity insurance in compliance with the requirements of a state in which the agency seeks approval from the United States Trustee; and

(ii) The deductible does not exceed a reasonable amount considering the financial resources of the agency; and

(iii) The amount of the offset or credit shall be the lesser of:

(A) The principal amount of such employee bond or fidelity insurance; or

(B) The employee bond or fidelity insurance amount determined under paragraph (e)(1) of this section.

§ 58.24 Procedures for obtaining final agency action on United States Trustees' decisions to deny agencies' applications and to remove approved agencies from the approved list.

(a) The United States Trustee shall remove an approved agency from the approved list whenever an approved agency requests its removal in writing.

(b) The United States Trustee may issue a decision to remove an approved agency from the approved list, and thereby terminate the approved agency's authorization to provide counseling services, at any time.

(c) The United States Trustee may issue a decision to deny an agency's application or remove an agency from the approved list whenever the United States Trustee determines that the agency has failed to comply with the standards or requirements specified in 11 U.S.C.§ 109(h) or 111, this rule, or the terms under which the United States Trustee designated it to act as an approved agency, including but not limited to finding any of the following:

(1) The agency is not employing adequate procedures for safekeeping or paying client funds, which results in a loss to a client;

(2) The agency's surety bond has been canceled;

(3) Any entity has revoked the agency's nonprofit status, even if that revocation is subject to further administrative or judicial litigation, review or appeal;

(4) Any entity has suspended or revoked the agency's license to do business in any jurisdiction; or

(5) Any United States district court has removed the agency under 11 U.S.C. 111(e).

(d) If the Internal Revenue Service revokes an agency's tax exempt status, the United States Trustee shall promptly commence an investigation to determine whether any of the factors set forth in paragraphs (c)(1) through (5) of this section exist.

(e) The United States Trustee shall provide to the agency in writing a notice of any decision either to:

(1) Deny the agency's application; or

(2) Remove the agency from the approved list.

(f) The notice shall state the reason(s) for the decision and shall reference any documents or communications relied upon in reaching the denial or removal decision. To the extent authorized by law, the United States Trustee shall provide to the agency copies of any such documents that were not supplied to the United States Trustee by the agency. The notice shall be sent to the agency by overnight courier, for delivery the next business day.

(g) Except as provided in paragraph (i) of this section, the notice shall advise the agency that the denial or removal decision shall become final agency action, and unreviewable, unless the agency submits in writing a request for review by the Director no later than 20 calendar days from the date of the notice to the agency.

(h) Except as provided in paragraph (i) of this section, the decision to deny an agency's application or remove an agency from the approved list shall take effect upon:

(1) The expiration of the agency's time to seek review from the Director, if the agency fails to timely seek review of a denial or removal decision; or

(2) The issuance by the Director of a final written decision, if the agency timely seeks such review.

(i) The United States Trustee may provide that a decision to remove an agency from the approved list is effective immediately and deny the agency the right to provide counseling services whenever the United States Trustee finds any of the factors set forth in paragraphs (c)(1) through (5) of this section.

(j) An agency's request for review shall be in writing and shall fully describe why the agency disagrees with the denial or removal decision, and shall be accompanied by all documents and materials the agency wants the Director to consider in reviewing the denial or removal decision. The agency shall send the original and one copy of the request for review, including all accompanying documents and

materials, to the Office of the Director by overnight courier, for delivery the next business day. In order to be timely, a request for review shall be received at the Office of the Director no later than 20 calendar days from the date of the notice to the agency.

(k) The United States Trustee shall have 30 calendar days from the date of the agency's request for review to submit to the Director a written response regarding the matters raised in the agency's request for review. The United States Trustee shall provide a copy of this response to the agency by overnight courier, for delivery the next business day.

(l) The Director may seek additional information from any party in the manner and to the extent the Director deems appropriate.

(m) In reviewing the decision to deny an agency's application or remove an agency from the approved list, the Director shall determine:

(1) Whether the denial or removal decision is supported by the record; and

(2) Whether the denial or removal decision constitutes an appropriate exercise of discretion.

(n) Except as provided in paragraph (o) of this section, the Director shall issue a written final decision no later than 60 calendar days from the receipt of the agency's request for review, unless the agency agrees to a longer period of time or the Director extends the deadline. The Director's final decision on the agency's request for review shall constitute final agency action.

(o) Whenever the United States Trustee provides under paragraph (i) of this section that a decision to remove an agency from the approved list is effective immediately, the Director shall issue a written decision no later than 15 calender days from the receipt of the agency's request for review, unless the agency agrees to a longer period of time, which decision shall:

(1) Be limited to deciding whether the determination that the removal decision should take effect immediately was supported by the record and an appropriate exercise of discretion;

(2) Constitute final agency action only on the issue of whether the removal decision should take effect immediately; and

(3) Not constitute final agency action on the ultimate issue of whether the agency should be removed from the approved list; after issuing the decision, the Director shall issue a written final decision by the deadline set forth in paragraph (n) of this section.

(p) In reaching a decision under paragraphs (n) and (o) of this section, the Director may specify a person to act as a reviewing official. The reviewing official's duties shall be specified by the Director on a case-by-case basis, and may include reviewing the record, obtaining additional information from the participants, providing the Director with written recommendations, and such other duties as the Director shall prescribe in a particular case.

(q) An agency that files a request for review shall bear its own costs and expenses, including counsel fees.

(r) When a decision to remove an agency from the approved list takes effect, the agency shall:

(1) Immediately cease providing counseling services to clients and shall not agree to provide counseling services to prospective clients;

(2) No later than 3 business days after the date of removal, issue all certificates to all clients who completed counseling services prior to the agency's removal from the approved list; and

(3) No later than 3 business days after the date of removal, return all fees to clients and prospective clients who had paid for counseling services, but had not completely received them.

(s) An agency must exhaust all administrative remedies before seeking redress in any court of competent jurisdiction.

Dated: January 18, 2008.

Clifford J. White III,

Director, Executive Office for United States Trustees.

[FR Doc. E8–1451 Filed 1–31–08; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 256

[Docket ID: MMS–2007–OMM–0064]

RIN 1010–AD44

Bonus or Royalty Credits for Relinquishing Certain Leases Offshore Florida

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rule.

SUMMARY: The MMS proposes to amend its regulations for oil and gas leases on the Outer Continental Shelf to implement a mandate in the Gulf of Mexico Energy Security Act of 2006. This proposed rule would (1) provide a credit to lessees who relinquish certain eligible leases in the Gulf of Mexico; (2) define eligible leases as those within 125 miles of the Florida coast in the Eastern Planning Area and certain leases within 100 miles of the Florida coast in the Central Planning Area; and (3) allow lessees to use the credits in lieu of monetary payment for either a lease bonus bid or royalty due on oil and gas production from most other leases in the Gulf of Mexico or to transfer the credits to other Gulf of Mexico lessees for their use.

DATES: Submit comments by April 1, 2008. The MMS may not fully consider comments received after this date. Submit comments to the Office of Management and Budget on the information collection burden in this proposed rule by March 3, 2008.

FOR FURTHER INFORMATION CONTACT: Marshall Rose, Chief, Economics Division, at (703) 787–1536.

ADDRESSES: You may submit comments on the rulemaking by any of the following methods. Please use the Regulation Identifier Number (RIN) 1010–AD44 as an identifier in your message. See also Public Availability of Comments under Procedural Matters.

- *Federal eRulemaking Portal: http://www.regulations.gov.* Select ''Minerals Management Service'' from the agency drop-down menu, then click ''submit.'' In the Docket ID column, select MMS–2007–OMM–0064 to submit public comments and to view supporting and related materials available for this rulemaking. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link. All comments will be posted to the docket.
- *Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention:* Regulations and Standards Branch (RSB); 381 Elden Street, MS–4024, Herndon, Virginia 20170–4817. Please reference ''Bonus or Royalty Credits for Relinquishing Certain Leases Offshore Florida, 1010–AD44'' in your comments and include your name and return address.
- *Send comments on the information collection in this rule to:* Interior Desk Officer 1010–AD44, Office of Management and Budget; 202–395–6566 (fax); e-mail: *oira_docket@omb.eop.gov*. Please also send a copy to MMS.

SUPPLEMENTARY INFORMATION:

Background and Summary of the Proposed Rule

Congress passed, and on December 20, 2006, the President signed, the Gulf of Mexico Energy Security Act of 2006 (GOMESA), Public Law No. 109–432.

Section 104(c) of that statute authorizes the Secretary of the Interior (Secretary) to issue a bonus or royalty credit for the exchange of certain leases located offshore of the State of Florida. The statute defines leases eligible for the credit as those in existence on the enactment date of the GOMESA and located both within specified Outer Continental Shelf (OCS) planning areas and distances from the Florida coastline. The statute sets the size of the credit as equal to the bonus and rental paid for the relinquished eligible lease, and limits its use to payments by lessees of bonuses and royalties for leases in the Gulf of Mexico (GOM) not subject to revenue sharing under section 8(g) of the Outer Continental Shelf Lands Act (OCSLA) (43 U.S.C. 1337(g)). Finally, the statute mandates a regulatory process for notifying the Secretary of a lessee's decision to exchange a lease for a credit, issuing the credit, allocating the credit among multiple lease owners, and transferring the credit to other parties.

To implement section 104(c), MMS proposes to add a new subpart N to 30 CFR part 256. Part 256 deals with OCS lease administration, including transfer and termination of a lease. After briefly reviewing the credit issuing process, the following discussion explains how MMS proposes to handle redemption of the credits.

Issuing Credits

Section 104, together with the definitions in section 102(1), (4), and (5), identifies the offshore area in which existing leases are located to be eligible to be exchanged for the credit. Therein, reference is made to parts of the Central Planning Area (CPA) and the Eastern Planning Area, as designated in the Draft Proposed Program Outer Continental Shelf Oil and Gas Leasing Program 2007–2012, dated February 2006. However, the area does not include all of the CPA in the area eligible for the credits. The GOMESA limits the included part of the CPA to the portion of the CPA within 100 miles of the coastline of the State of Florida, and to the area that lies either within a particular area shown on a map that MMS published 10 years ago, or, east of a particular coordinate line on the Pensacola Official Protraction Diagram.

The MMS previously delineated the area in which leases are eligible for the credit using Official Protraction Diagram (OPD) designations. The OPD, in conjunction with the OCS block numbers, uniquely identifies each OCS block by a designated numbering system. The planning area boundaries that were in effect when MMS published the referenced maps coincided with the OPD boundaries. After recent changes MMS made in the boundary between its Eastern, Central, and Western Planning Areas for the GOM, the new planning area boundaries do not coincide with the pre-existing OPD boundaries. Thus, definitions added to §§ 256.5 and 256.90 propose to use OPD boundaries to define the western extent of the eligible area. The northern and eastern extent of the eligible area is the seaward boundary of the State of Florida.

The GOMESA defines the southern extent of the eligible area by reference to the distance from the Florida coastline. Parts of three OPDs (Desoto Canyon, Destin Dome, and Pensacola) are both in the eligible part of the new CPA and within the requisite 100 miles of the Florida coastline. Other parts of these three OPDs, as well as other OPDs, are in the new Eastern planning area and within the requisite 125 miles of the Florida coastline. These areas contain a total of 79 still active leases as of the end of calendar year 2006. The GOMESA makes all of these leases that were in effect on December 20, 2006, the date of enactment of the GOMESA, eligible for this exchange program. The MMS seeks comments on whether this interpretation of eligibility for the credits based on location and lease status complies with the requirements specified in GOMESA.

Section 256.91 proposes to grant credits equal to the original bonus paid for the relinquished lease plus the cumulative rental paid on that lease since issuance. Because the GOMESA explicitly values the credits as equal only to the sum of these two costs, no authority exists to include reimbursement for any other costs. Thus, MMS will not credit or value any exploration costs incurred in connection with eligible leases for purposes of issuing credits; nor will MMS include time value of money (interest) in calculating the amount of a credit. The MMS estimates the aggregate value of credits available under the statutory formula as slightly more than $60 million.

The following table lists each lease identified under the proposed interpretation of GOMESA that is eligible for the credit and the amount of the credit. MMS seeks comments about whether any variations exist between the data in this table and the information held by the lease owners.

LEASES AND AMOUNTS ELIGIBLE FOR BONUS OR ROYALTY CREDIT

Lease No.	Lease effective date	Bid amount	Rental paid to 12/31/2006	Total credit
G06390	2/1/1984	$957,000	$86,400	$1,043,400
G06401	2/1/1984	1,103,450	51,265	1,154,715
G06402	2/1/1984	1,106,780	85,825	1,192,605
G06406	2/1/1984	1,607,800	69,120	1,676,920
G06407	2/1/1984	1,308,800	311,040	1,619,840
G06408	2/1/1984	1,106,430	103,105	1,209,535
G06409	2/1/1984	1,213,500	103,105	1,316,605
G06440	2/1/1984	918,500	82,032	1,000,532
G06464	3/1/1984	1,107,500	57,762	1,165,262
G06469	2/1/1984	1,613,500	75,038	1,688,538
G06470	2/1/1984	1,107,500	75,038	1,182,538
G06474	2/1/1984	1,610,800	75,038	1,685,838
G06475	2/1/1984	1,201,700	75,038	1,276,738
G06476	2/1/1984	1,107,500	75,038	1,182,538
G06477	2/1/1984	908,700	75,038	983,738
G08308	3/1/1987	2,877,000	77,866	2,954,866
G08309	3/1/1987	2,325,000	17,173	2,342,173
G08310	3/1/1987	1,165,000	17,173	1,182,173
G08333	2/1/1988	1,379,000	71,854	1,450,854
G08334	2/1/1988	1,379,000	71,854	1,450,854
G08346	2/1/1988	1,355,000	67,593	1,422,593

LEASES AND AMOUNTS ELIGIBLE FOR BONUS OR ROYALTY CREDIT—Continued

Lease No.	Lease effective date	Bid amount	Rental paid to 12/31/2006	Total credit
G08361	8/1/1986	1,837,000	59,107	1,896,107
G08362	8/1/1986	944,000	59,107	1,003,107
G08363	8/1/1986	3,276,000	59,107	3,335,107
G08364	8/1/1986	2,377,000	59,107	2,436,107
G08365	8/1/1986	1,857,000	59,107	1,916,107
G08366	8/1/1986	944,000	59,107	1,003,107
G08367	8/1/1986	1,363,000	59,107	1,422,107
G08368	8/1/1986	1,117,000	59,107	1,176,107
G10404	4/1/1990	157,000	52,100	209,100
G10405	4/1/1990	145,000	52,100	197,100
G10408	4/1/1990	149,000	52,100	201,100
G10409	4/1/1990	187,000	52,100	239,100
G10410	4/1/1990	209,000	52,100	261,100
G10413	11/1/1989	150,550	51,899	202,449
G10414	11/1/1989	150,550	51,899	202,449
G10415	4/1/1990	153,000	52,100	205,100
G10417	11/1/1989	306,200	64,811	371,011
G10426	6/1/1990	150,550	37,199	187,749
G10427	6/1/1990	150,550	37,199	187,749
G10428	11/1/1989	218,880	115,445	334,325
G10429	11/1/1989	155,300	41,827	197,127
G10430	6/1/1990	145,000	47,330	192,330
G10431	6/1/1990	938,500	41,649	980,149
G10432	6/1/1990	330,900	41,649	372,549
G10433	6/1/1990	900,600	41,649	942,249
G10434	6/1/1990	245,200	41,649	286,849
G10435	6/1/1990	376,500	41,649	418,149
G10436	11/1/1989	2,102,400	115,445	2,217,845
G10437	11/1/1989	910,080	115,445	1,025,525
G10438	11/1/1989	155,200	41,747	196,947
G10439	11/1/1989	167,200	76,387	243,587
G10440	11/1/1989	184,500	80,743	265,243
G10443	11/1/1989	560,600	80,743	641,343
G10446	10/1/1990	146,000	61,995	207,995
G10447	10/1/1990	146,000	61,995	207,995
G10448	10/1/1990	146,000	61,995	207,995
G10449	10/1/1990	153,000	61,995	214,995
G10450	10/1/1990	153,000	61,995	214,995
G10451	10/1/1990	145,000	61,995	206,995
G10452	10/1/1990	168,000	61,995	229,995
G10453	10/1/1990	153,000	61,995	214,995
G10454	10/1/1990	168,000	61,995	229,995
G10455	10/1/1990	148,500	41,922	190,422
G10456	10/1/1990	156,100	41,922	198,022
G10459	10/1/1990	181,500	41,922	223,422
G10460	10/1/1990	148,700	41,922	190,622
G10461	10/1/1990	159,200	41,922	201,122
G10462	10/1/1990	196,500	41,922	238,422
G10463	10/1/1990	151,700	41,922	193,622
G10464	10/1/1990	157,500	41,922	199,422
G10465	10/1/1990	147,300	41,922	189,222
G10466	10/1/1990	147,300	41,922	189,222
G10471	10/1/1990	163,500	41,922	205,422
G10472	10/1/1990	195,400	41,922	237,322
G10473	10/1/1990	192,600	41,922	234,522
G10477	10/1/1990	157,600	41,922	199,522
G10484	10/1/1990	145,000	61,995	206,995
G10485	10/1/1990	158,000	61,995	219,995
79		$55,458,120	4,944,064	60,402,184

The process proposed by § 256.92 for claiming a credit would begin when all parties holding record title interests in an eligible lease notify the Regional Supervisor for Leasing and Environment in the MMS GOM Regional Office of the decision to exchange the lease. Parties holding record title interest in an eligible lease are permitted up to 1 year from the effective date of the final rule to apply for these credits. After that date, MMS will no longer accept applications for the credits provided for in this rule. In addition to a request for a credit, the notification would include: (1) The name of a contact for each record title holder; (2) the percentage record title interest of each owner; (3) a list of the bonus and rental payments made by, or on behalf of, all current owners of the lease; and (4) the form

(Form MMS–152, Relinquishment of Federal Oil and Gas Lease) necessary to execute relinquishment according to § 256.76. The MMS would confirm the percentage interest and payments claimed by the current owners and add any bonus bid or rental payments made by prior owners to determine the credit amount.

Once the adjudication unit in the MMS GOM Region has approved the exchange, the MMS' Minerals Revenue Management (MRM) office would post the credits in the appropriate company payor accounts of the record title interest owners. The credit would become available when MMS sends a written certification to the record title interest owners of an eligible lease that this lease has qualified for a credit of a specific amount.

In the case of multiple record title interest owners of an eligible lease, § 256.93 proposes that MMS would allocate the credit to each record title interest owner based on its percentage of total ownership interest in the lease at the time the owners submit to MMS the request to exchange the lease.

The MMS recognizes that the original lessee(s) would have made bonus payments. If the original lessee sells its record title interest in a lease, the financial terms of the sale will have compensated the original lessee, in some manner satisfactory to it, for the bonus payment it made for its record title interest. Thus, the current record title interest owners made the timely and legally binding investment to acquire and hold the right to explore for and produce the oil and gas that may underlie the seabed on that lease. Therefore, MMS would allocate current record title interest owners the credit usable to acquire an interest in another lease or to pay royalties on production from another lease. Moreover, if the terms of any particular operating rights assignment imply any right or interest in that credit on the part of the assignee, then the current record title holder and the assignee may resolve that issue between themselves.

Redeeming Credits

Section 256.94(a) proposes to authorize current record title interest owners to redeem these credits as either payment of bonus bids or royalties paid in value. The notice MMS sends certifying that a lease has qualified for a credit would include the amount of the credit and instructions on how to apply the credit, either to a bonus payment due on a successful bid for new leases or to royalties reported due on Form MMS 2014—Report of Sales and Royalty Remittance for other leases.

Under section 104(c)(3) of the statute, the credit may not be used in lieu of payments due under a lease subject to the revenue distribution provisions of section 8(g) of the OCSLA (43 U.S.C. 1337(g)). Under section 8(g)(2), the Secretary pays 27 percent of bonuses, rents, royalties, and other moneys collected from leases lying within 3 nautical miles of the seaward boundary of a coastal state to that state (or 27 percent of the portion of such revenues corresponding to the portion of the lease that lies within 3 nautical miles of the state's seaward boundary). Proposed § 256.94(a) contains this restriction.

Provisions in section 105 of the GOMESA create certain other revenue distribution requirements in addition to the 8(g) provisions. Since Congress certainly knew of, but did not include, these newer revenue distribution programs in this exclusion, this proposal allows a bonus or royalty credit to be used for payments due from leases subject to these newer revenue distribution provisions.

Because using a credit to pay a bonus or royalty in lieu of payment in cash results in the United States receiving less money than if the bidder or lessee paid in cash, it necessarily follows that any distribution of royalty or bonus payments to a state or coastal political subdivision under GOMESA section 105 would result in a corresponding reduction from what it would have been had the entire payment been made in cash. However, MMS projects that the financial impact of section 105 on the coastal states during fiscal years 2007 through 2016 would be very limited. In that time period, under the definition of ''qualified Outer Continental Shelf revenues'' in GOMESA section 102(9), section 105's distribution requirements apply only to revenues derived from new leases issued after GOMESA's enactment in the portion of the 181 Area located in the Eastern Planning Area and to the 181 South Area. Production and royalty from such leases will not occur anytime soon. Further, MMS allocates the portion of qualified Outer Continental Shelf revenues paid to Gulf producing states between those states based on an inverse distance formula. Therefore, any financial impact on a particular state of a reduction in a particular bonus payment for a new lease in the subject areas because of use of a bonus credit should be very minimal. In fact, lessees who obtain credits will more likely apply them to royalties due under other existing leases with no revenue distribution to non-Federal recipients, or transfer them to other parties for that purpose, thus further reducing the financial impact to states and localities from this treatment of credit.

The GOMESA limits the credit to monetary payments. The MMS makes explicit in proposed § 256.94(b) that the credit does not apply to royalty-in-kind (RIK) deliveries. Section 102 of the statute defines the credit as follows:

> The term ''bonus or royalty credit'' means a legal instrument or other written documentation, or an entry in an account managed by the Secretary, that may be used in lieu of any other *monetary* [emphasis added] payment for—
>
> (A) a bonus bid for a lease on the outer Continental Shelf; or
>
> (B) a royalty due on oil or gas production from any lease located on the outer Continental Shelf.

The RIK deliveries are not monetary payments. Since the lessee fulfills its royalty obligations by delivering a volume of oil and gas to MMS, the lessee pays no money when paying the RIK. Thus, a lessee cannot use a monetary credit in lieu of delivering RIK. Under current circumstances, exclusion of RIK would confine the application of a royalty credit under the proposed rule to about 30 percent of the roughly $4 billion in royalty generated annually by GOM producers. Recent royalty collections from 8(g) sources in the GOM total about 3 percent of all oil and gas royalties collected offshore in the GOM. Thus, annual royalties currently paid in cash, to which credits under this proposed rule may apply, total over $1 billion under leases on tracts in the GOM lying outside the ''8(g) zone''—more than 16 times the total value of credits that could be issued under this rule, even if no credits were applied to bonus payments in future lease sales.

Section 256.94(c) proposes to address credits that remain unused after 5 years from the date MMS issues the credits. The section would state that if any credit remains unused after 5 years from the date MMS issued the credit, the MMS reserves the right to apply the remaining credit to the credit holder's ongoing obligations at MMS's discretion.

Section 256.95 proposes to allow current record title interest owners to transfer credits to other parties. The transferee of the credit could use the full face amount of the credit. (Any discount in a payment from the transferee to the transferor of the credit would be a matter solely between those two parties.) This attribute of the credit would largely mitigate any perceived limitation imposed by restricting use of the credit to future bonus or royalty in-value due. As indicated, the expected aggregate size of the credits created

under section 104(c) constitutes only about 6 percent of the royalty in-value collected annually in the GOM. Thus, an ample market should exist for companies that wish to transfer rather than directly use credits they may receive.

When MMS receives the necessary transfer information, MRM will adjust the financial accounts of the transferor and transferee accordingly. The credit becomes available when the MMS sends a written confirmation to the transferee. Rather than create a standard form that must be executed to effect a credit transfer, this rule proposes to rely on a ''Letter of Agreement'' signed by an authorized official of both the transferor and transferee companies to transfer a bonus or royalty credit. A more formal process does not appear warranted by the few companies involved, all of which have other Gulf of Mexico activities, and the size of the credits relative to authorized uses. The MMS seeks comments on whether a high volume of transfers would warrant a more formal credit transfer process like that used for lease assignments.

To summarize, this proposed rule would offer credits equal to past bonus and rental payments made in connection with 79 offshore leases near Florida in exchange for relinquishment of these leases. The necessary restrictions that MMS proposes for the use of those credits would not compromise their value because the credits would have no expiration date, are transferable, and in aggregate are quite small in magnitude relative to the bonus or royalty-in-value payment obligations to which they can be applied. The credits may be used to meet future bonus or royalty-in-value payments for leases in the GOM outside the 8(g) zone.

Procedural Matters

Regulatory Planning and Review (Executive Order (E.O.) 12866)

This proposed rule is not a significant rule as determined by the Office of Management and Budget (OMB) and is not subject to review under E.O. 12866.

(1) This proposed rule would not have an annual effect of $100 million or more on the economy. It would not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The total value of the credit is defined by statute as bonuses and rental paid on the leases in the eligible area. The MMS records show 79 leases are eligible. Total bonuses and rentals paid in connection with these leases is about $60 million.

(2) This proposed rule would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency because the credit is confined to leases in Federal offshore waters that lie outside the coastal jurisdiction of State and other local agencies.

(3) This proposed rule would not alter the budgetary effects of entitlements, grants, user fees or loan programs, or the rights or obligations of their recipients.

(4) This proposed rule would not raise novel legal or policy issues. The proposed rule would implement a statutory program that exchanges a credit against future obligations for the return of old, largely inactive leases in a sensitive area.

Regulatory Flexibility Act

The Department of the Interior certifies that this proposed rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This proposed rule applies to the lessees holding record title interests in the 79 offshore leases located near the coastline of the State of Florida. These lessees fall under the Small Business Administration's North American Industry Classification System (NAICS) code 211111, Crude Petroleum and Natural Gas Extraction. Under this NAICS code, companies with less than 500 employees are considered small businesses. Only one of the current record title owners of these 79 leases has less than 500 employees. Moreover, this rule provides a clear benefit to the lessees. It specifies a valuable credit and a simple process for claiming a benefit for relinquishing a lease which the owners have had trouble operating due to access limitations.

This proposed rule would create a relatively small amount of total credits in exchange for certain leases through a relinquishment process that all OCS lessees are accustomed to using. The credits could be used to fulfill any of a relatively large pool of routine bonus or royalty in-value OCS obligations under leases located in the GOM. The credits also would be freely transferable or assignable, and would have no time limit on use. Thus, should a small entity obtain a credit through a transfer, it would be able to use the credit for routine obligations or it could exchange the credit for approximately equivalent value in a potentially large market of other users. The provisions of this proposed rule would not have a significant adverse economic effect on offshore lessees and operators, including those that are classified as small businesses.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the actions of MMS, call 1–888–734–3247. You may comment to the Small Business Administration without fear of retaliation. Disciplinary action for retaliation by an MMS employee may include suspension or termination from employment with the DOI.

Small Business Regulatory Enforcement Fairness Act

This proposed rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)). This proposed rule:

a. Would not have an annual effect on the economy of $100 million or more. This proposed rule would offer credits worth approximately $60 million for the exchange of 79 leases in a sensitive area. Not all companies may choose to relinquish their leases for the credit offered. Even if all the credits were redeemed in 1 year, it would not have an annual effect on the economy of $100 million.

b. Would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, local government agencies, or geographic regions. The credit represents only a transfer of previous payments back to lessees. The relatively small amount returned by these credits would have little effect on markets, agencies, or regions.

c. Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Productive activities have been restricted on the leases that would be returned, and the monetary credit received in exchange would be too small to have a perceptible effect.

Unfunded Mandates Reform Act

This proposed rule would not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The proposed rule would not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing

the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings Implication Assessment (E.O. 12630)

Under the criteria in E.O. 12630, this proposed rule does not have significant takings implications. The proposed rule is not a governmental action capable of interference with constitutionally protected property rights. A takings implication assessment is not required.

Federalism (E.O. 13132)

Under the criteria in E.O. 13132, this proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. As noted above, the potential revenue sharing effects are excluded either explicitly or implicitly by virtue of the treatment of the expected credit redemptions. This proposed rule would not substantially and directly affect the relationship between the Federal and State governments. To the extent that State and local governments have a role in OCS activities, this proposed rule would not affect that role. A Federalism Assessment is not required.

Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (E.O. 13175)

Under the criteria in E.O. 13175, we have evaluated this proposed rule and determined that it has no potential effects on federally recognized Indian tribes. There are no Indian or tribal lands on the OCS.

Paperwork Reduction Act (PRA) of 1995

This proposed rule contains a collection of information that will be submitted to OMB for review and approval under § 3507(d) of the PRA. This proposed rule also refers to, but does not change, information collection burdens already covered and approved under OMB Control Number 1010–0006.

As part of our continuing effort to reduce paperwork and respondent burdens, MMS invites the public and other Federal agencies to comment on any aspect of the reporting and recordkeeping burden. You may submit your comments on the information collection aspects of this rule directly to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, OMB Attention: Desk Officer for the Department of the Interior via OMB e-mail: (*OIRA_DOCKET@omb.eop.gov*); or by fax (202) 395–6566; identify with 1010–AD44. Send a copy of your comments to the Regulations and Standards Branch (RSB), Attn: Comments; 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference ''Bonus or Royalty Credits for Relinquishing Certain Leases Offshore Florida''—AD44 in your comments. You may obtain a copy of our submission to OMB for the new collection of information by contacting the Bureau's Information Collection Clearance Officer at (202) 208–7744.

The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB received it by March 3, 2008. This does not affect the deadline for the public to comment to MMS on the proposed regulations. The title of the information collection is ''30 CFR Part 256, Bonus or Royalty Credits for Relinquishing Certain Leases Offshore Florida.''

Respondents are those from the approximately 130 Federal oil and gas lessees who may earn or trade for the bonus or royalty credit. This rulemaking affects those companies that own record title interests in 79 leases. Responses to this collection are required to obtain benefits. The frequency of response is on occasion. The information collection (IC) does not include questions of a sensitive nature. The IC involves requests for a bonus or royalty credit in exchange for relinquishing certain leases or the transfer of such credit to another entity. The MMS will use this information to track the possession and redemption of these special bonus or royalty credits.

The OMB approved the collection of information required by the current 30 CFR part 256 regulations under OMB Control Number 1010–0006 (17,058 burden hours, expiration 5/31/2010). When the final regulations take effect, MMS will consolidate the information collection burden approved for this proposed rulemaking into the primary 30 CFR part 256 information collection under 1010–0006.

The following table shows the two new paperwork burden estimates for this proposed rulemaking. We estimate a total of 45 burden hours, including the time for gathering the information and submitting the request to MMS for review. It should be noted that this rulemaking concerns only 79 current leases and will not affect future leases. Therefore, the associated information collection would be a one-time only burden should respondents holding eligible leases elect to take advantage of the bonus or royalty credits for relinquishing these leases.

Citation 30 CFR part 256 subpart N	Reporting & recordkeeping requirement	Hour burden	Average No. of annual responses	Annual burden hours
92(a)	Request a bonus or royalty credit and submit supporting documentation.	1	30	30
92(a)(5)	Submit a request to relinquish lease according to § 256.76	Burden currently approved under 1010–0006.*		
95	Request approval to transfer bonus or credit to another party with supporting information.	1	15	15
TOTAL BURDEN			45	45

*240 hours for this requirement are already approved under 1010–0006.

The MMS specifically solicits comments on the following questions:

(a) Is the proposed collection of information necessary for MMS to properly perform its functions, and will it be useful?

(b) Are the estimates of the burden hours of the proposed collection reasonable?

(c) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(d) Is there a way to minimize the information collection burden on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology?

In addition, the PRA requires agencies to estimate the total annual reporting and recordkeeping ''non-hour cost'' burden resulting from the collection of information. We have not identified any, and we solicit your comments on this item. For reporting and recordkeeping only, your response should split the cost estimate into two components: (a) Total capital and start-up cost component and (b) annual operation, maintenance, and purchase of services component. Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and start-up costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, drilling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased:

(1) Before October 1, 1995;

(2) To comply with requirements not associated with the information collection;

(3) For reasons other than to provide information or keep records for the Government; or

(4) As part of customary and usual business or private practices.

National Environmental Policy Act (NEPA) of 1969

We have analyzed this proposed rule in accordance with the criteria of the National Environmental Policy Act and the Department Manual at 516 DM. We determined this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment. This proposed rule deals with financial matters and has no direct effect on MMS decisions on environmental activities; hence, an environmental impact statement is not required. Pursuant to Department Manual 516 DM 2.3A (2), Section 1.10 of 516 DM 2, Appendix 1 excludes from documentation in an environmental assessment or impact statement ''policies, directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature; or the environmental effects of which are too broad, speculative or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or case-by-case.'' Section 1.3 of the same appendix clarifies that royalties and audits are considered routine financial transactions that are subject to categorical exclusion from the NEPA process. No exception to the categorical exclusion applies.

Data Quality Act

In developing this rule we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554).

Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211. A Statement of Energy Effects is not required.

Public Availability of Comments

Before including your address, phone number, email 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.

Clarity of This Regulation

We are required by E.O. 12866, E.O. 12988, and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

List of Subjects in 30 CFR Part 256

Administrative practice and procedure, Continental shelf, Government contracts, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: January 16, 2008.

C. Stephen Allred,

Assistant Secretary—Land and Minerals Management.

For the reasons stated in the preamble, the Minerals Management Service (MMS) proposes to amend 30 CFR part 256 as follows:

PART 256—LEASING OF SULPHUR OR OIL AND GAS IN THE OUTER CONTINENTIAL SHELF

1. The authority citation for part 256 is revised to read as follows:

Authority: 31 U.S.C. 9701, 42 U.S.C. 6213, 43 U.S.C. 1334, P. L. No. 109–432.

2. Section 256.5 is amended by adding definitions for ''Bonus or royalty credit,'' ''Central planning area,'' ''Coastline,'' ''Desoto Canyon OPD,'' ''Destin Dome OPD,'' ''Eastern planning area,'' and ''Pensacola OPD'' to read as follows:

§ 256.5 Definitions.

* * * * *

(m) *Bonus or royalty credit* means a legal instrument or other written documentation, or an entry in an account managed by the Secretary that a bidder or lessee may use in lieu of any other monetary payment for—

(1) A bonus due for a lease on the outer Continental Shelf; or

(2) A royalty due on oil or gas production from any lease located on the outer Continental Shelf.

(n) *Central planning area* means the Central Gulf of Mexico Planning Area of the outer Continental Shelf, as designated in the document entitled ''Draft Proposed Program Outer Continental Shelf Oil and Gas Leasing Program 2007–2012,'' dated February 2006.

(o) *Coastline* means the line of ordinary low water along that portion of the coast in direct contact with the open sea and the line marking the seaward limit of inland waters.

(p) *Desoto Canyon OPD* means the official protraction diagram designated as Desoto Canyon which has a western edge located at the universal transverse mercator (UTM) X coordinate 1,346,400 in the North American Datum of 1927 (NAD 27).

(q) *Destin Dome OPD* means the official protraction diagram designated as Destin Dome which has a western edge located at the universal transverse mercator (UTM) X coordinate 1,393,920 in the NAD 27.

(r) *Eastern planning area* means the Eastern Gulf of Mexico Planning Area of the outer Continental Shelf, as designated in the document entitled ''Draft Proposed Program Outer Continental Shelf Oil and Gas Leasing Program 2007–2012'', dated February 2006.

(s) *Pensacola OPD* means the official protraction diagram designated as Pensacola which has a western edge located at the universal transverse mercator (UTM) X coordinate 1,393,920 in the NAD 27.

3. A new subpart N consisting of §§ 256.90 through 256.95 are added to read as follows:

Subpart N—Bonus or Royalty Credits for Exchange of Certain Leases

Sec.
256.90 Which leases may I exchange for a bonus or royalty credit?
256.91 How much bonus or royalty credit will MMS grant in exchange for a lease?
256.92 What must I do to obtain a bonus or royalty credit?
256.93 How is the bonus or royalty credit allocated among multiple lease owners?
256.94 How may I use the bonus or royalty credit?
256.95 How do I transfer a bonus or royalty credit to another person?

§ 256.90 Which leases may I exchange for a bonus or royalty credit?

You may exchange a lease for a bonus or royalty credit if it:

(a) Was in effect on December 20, 2006, and

(b) Is located in:

(1) The Eastern planning area and within 125 miles of the coastline of the State of Florida, or

(2) The Central planning area and within the Desoto Canyon OPD, the Destin Dome OPD, or the Pensacola OPD and within 100 miles of the coastline of the State of Florida.

§ 256.91 How much bonus or royalty credit will MMS grant in exchange for a lease?

The amount of the bonus or royalty credit for an exchanged lease equals the sum of:

(a) The amount of the bonus payment; and

(b) All rental paid for the lease as of the date the lessee submits the request to exchange the lease under § 256.92 to MMS.

§ 256.92 What must I do to obtain a bonus or royalty credit?

(a) To obtain the bonus or royalty credit, all of the record title interest owners in the lease must submit the following to the MMS Regional Supervisor for Leasing and Environment for the Gulf of Mexico on or before [INSERT THE DATE THAT IS 1 YEAR AFTER THE EFFECTIVE DATE OF THE FINAL RULE IN THE **Federal Register**]:

(1) A written request to exchange the lease for the bonus or royalty credit, signed by all record title interest owners in the lease.

(2) The name and contact information for a person who will act as a contact for each record title interest owner.

(3) Documentation of each record title interest owner's percentage share in the lease.

(4) A list of all bonus and rental payments for that lease made by, or on behalf of, each of the current record title owners.

(5) A written relinquishment of the lease as described in § 256.76. Notwithstanding § 256.76, the relinquishment will become effective when the credit becomes effective under paragraph (b) of this section.

(b) The credit becomes effective when MMS issues a certification to the record title interest owners that the lease has qualified for the credit.

§ 256.93 How is the bonus or royalty credit allocated among multiple lease owners?

The MMS will allocate the bonus or royalty credit for an exchanged lease to the current record title interest owners in the same percentage share as each owner has in the lease as of the date of the request to exchange the lease.

§ 256.94 How may I use the bonus or royalty credit?

(a) You may use a credit issued under this part in lieu of a monetary payment due under any lease in the Gulf of Mexico not subject to the revenue distribution provisions of section 8(g)(2) of the OCSLA (43 U.S.C. 1337(g)(2)) for either:

(1) A bonus for acquisition of an interest in a new lease; or

(2) Royalty due on oil and gas production after [INSERT THE DATE THAT IS 30 DAYS AFTER THE PUBLICATION DATE OF THE FINAL RULE IN THE **Federal Register**].

(b) You may not use a bonus or royalty credit in lieu of delivering oil or gas taken as royalty-in-kind.

(c) If you have any credit that remains unused after 5 years from the date MMS issued the credit, MMS reserves the right to apply the remaining credit to your ongoing obligations at its discretion.

§ 256.95 How do I transfer a bonus or royalty credit to another person?

(a) You may transfer your bonus or royalty credit to any other person by submitting to the MMS Adjudication Unit for the Gulf of Mexico two originally executed transfer letters of agreement.

(b) Authorized officers of all companies involved in transferring and receiving the credit must sign the transfer letters of agreement as indicated on the qualification card filed with MMS.

(c) A transfer letter of agreement must include:

(1) The effective date of the transfer,

(2) The OCS–G number for the lease that originally qualified for the credit,

(3) The amount of the credit being transferred,

(4) Company names punctuated exactly as filed on the qualification card at MMS, and

(5) A corporate seal, only if MMS used a corporate seal qualification process for your corporation.

(d) The transferee of a credit transferred under this section may use it in accordance with § 256.94 as soon as MMS sends a confirmation of the transfer to the transferee.

[FR Doc. E8–1860 Filed 1–31–08; 8:45 am]

BILLING CODE 4310–MR–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Parts 1190 and 1191

RIN 3014–AA22

Emergency Transportable Housing Advisory Committee

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has established an advisory committee to make recommendations for possible revisions to the Americans with Disabilities Act (ADA) and Architectural Barriers Act (ABA) Accessibility Guidelines to include provisions for emergency transportable housing. This notice announces the dates, time, and location

of the next in-person committee meeting and a committee conference call.

DATES: The conference call is scheduled for February 14, 2008 from 10 a.m. to Noon (Eastern time); the in-person meeting is scheduled from 10 a.m. to 5 p.m. on March 27 and from 9 a.m. to 5 p.m. on March 28.

ADDRESSES: Individuals can participate in the conference call on February 14, 2008 by dialing the teleconference number which will be posted on the Access Board's Web site (*http://www.access-board.gov/eth/*). The in-person meeting will be held at the Access Board's offices, 1331 F Street, NW., Suite 1000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Marsha Mazz, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., Suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–0020 (Voice); (202) 272–0082 (TTY). These are not toll-free numbers. E-mail address: *mazz@access-board.gov.*

SUPPLEMENTARY INFORMATION: On August 23, 2007, the Architectural and Transportation Barriers Compliance Board (Access Board) established an advisory committee to make recommendations for possible revisions to the Americans with Disabilities Act (ADA) and Architectural Barriers Act (ABA) Accessibility Guidelines to include provisions for emergency transportable housing (72 FR 48251; August 23, 2007).

The committee will hold a conference call on February 14 from 10 a.m. to Noon (Eastern time) to discuss definitional issues. The agenda, instructions (including information on captioning), and dial-in telephone number for the conference call is available on the Access Board's Web site (*http://www.access-board.gov/eth/*). The conference call is open to the public and interested persons can dial in and communicate their views during a public comment period scheduled during the conference call. Participants may call in from any location of their choosing.

The next in-person committee meeting will take place from 10 a.m. to 5 p.m. on March 27 and from 9 a.m. to 5 p.m. on March 28. It will focus on outstanding issues which have not yet been resolved. The preliminary meeting agenda, along with information about the committee, is available at the Access Board's Web site (*http://www.access-board.gov/eth/*). Committee meetings are open to the public and interested persons can attend the meetings and communicate their views. Members of the public will have opportunities to address the committee on issues of interest to them during public comment periods scheduled on each day of the meeting.

The in-person meeting site is accessible to individuals with disabilities. Individuals who require sign language interpreters, real-time captioning, or materials in alternate formats should contact Marsha Mazz by March 6. Also, persons wishing to provide handouts or other written information to the committee are requested to provide them in an electronic format to Marsha Mazz preferably by e-mail so that alternate formats such as large print can be distributed to committee members. Persons attending the in-person meeting are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants.

Lawrence W. Roffee,

Executive Director.

[FR Doc. E8–1894 Filed 1–31–08; 8:45 am]

BILLING CODE 8150–01–P

POSTAL REGULATORY COMMISSION

39 CFR 3001

[Docket No. PI2008–2; Order No. 56]

Administrative Practice and Procedure, Postal Service

AGENCY: Postal Regulatory Commission.

ACTION: Advance notice of proposed rulemaking and order.

SUMMARY: This document notes that the Secretary of the Treasury, as required by recent postal reform legislation, has filed with the Commission a report and recommendations on accounting practices and principles that will govern the operation of the Competitive Products Fund. It briefly reviews the recommendations, poses several related questions, and invites public comment. Comments will assist the Commission in developing future regulations governing the Competitive Products Fund.

DATES: Initial comments are due April 1, 2008; reply comments are due May 1, 2008.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 and *stephen.sharfman@prc.gov*.

SUPPLEMENTARY INFORMATION: *Regulatory History*, 72 FR 63662 (November 9, 2007).

I. Introduction

Section 401 of the Postal Accountability and Enhancement Act, Public Law 109–435 (PAEA), codified at 39 U.S.C. 2011(h), requires the Secretary of the Treasury (Treasury) in consultation with the Postal Service and an independent certified public accounting firm to develop recommendations for accounting practices and principles that will govern the operation of the Competitive Products Fund (CPF) and the determination of an assumed Federal income tax to be imposed on competitive products income. Treasury submitted its report and recommendations to the Commission on December 19, 2007.[1]

Section 2011(h)(2)(A) requires that interested persons, including the Postal Service, users of the mails, and an officer of the Commission, be given an opportunity to comment on the Report's recommendations in such manner as the Commission considers appropriate. To fulfill that obligation, the Commission is initiating this docket soliciting comments on both Treasury's recommendations, and specific questions posed by the Commission in response to the Report. Initial comments are due 60 days after publication of this notice in the **Federal Register**. Reply comments are due 90 days after publication of this notice in the **Federal Register**.

After review of the comments, the Commission will commence a rulemaking proceeding to develop regulations to satisfy the requirements of section 2011(h)(2), including establishing the accounting practices and principles to govern the operation of the CPF and rules for determining the assumed Federal income tax on competitive products income.[2] Interested persons will have an opportunity to comment on the proposed regulations.

[1] *See Report of the U.S. Department of the Treasury on Accounting Principles and Practices for the Operation of the United States Postal Service's Competitive Products Fund*, December 19, 2007 (Report). The Report may be accessed from the Commission's Web site, *http://www.prc.gov*.

[2] Pursuant to section 2011(h)(2)(B)(ii), the final regulations are to be issued within 12 months of the date Treasury submitted its recommendations, or such later date as agreed to by the Commission and the Postal Service.

II. Statutory Framework for Competitive Products' Accounting Practices and Assumed Federal Income Tax

The Report fulfills Treasury's obligation under section 2011(h), which provides as follows:

> (h)(1)(A) The Secretary of the Treasury, in consultation with the Postal Service and an independent, certified public accounting firm and other advisors as the Secretary considers appropriate, shall develop recommendations regarding—
>
> (i) the accounting practices and principles that should be followed by the Postal Service with the objectives of—
>
> (I) identifying and valuing the assets and liabilities of the Postal Service associated with providing competitive products, including the capital and operating costs incurred by the Postal Service in providing such competitive products; and
>
> (II) subject to subsection (e)(5), preventing the subsidization of such products by market-dominant products; and
>
> (ii) the substantive and procedural rules that should be followed in determining the assumed Federal income tax on competitive products income of the Postal Service for any year (within the meaning of section 3634).
>
> (B) Not earlier than 6 months after the date of enactment of this section, and not later than 12 months after such date, the Secretary of the Treasury shall submit the recommendations under subparagraph (A) to the Postal Regulatory Commission.

39 U.S.C. 2011(h)(1)(A)–(B).

As relates to its task of developing recommendations pursuant to section 2011(h)(1), Treasury identifies five PAEA requirements applicable to competitive products:

1. The prohibition against subsidies by market dominant products (sections 3633(a)(1) and 2011(h)(1)(A)(II));
2. The requirement that each competitive product cover its attributable costs (section 3633(a)(2));
3. The requirement that competitive products collectively cover what the Postal Regulatory Commission determines to be an appropriate share of the Postal Service's institutional costs (section 3633(a)(3));
4. The obligation to annually compute an assumed Federal income tax on competitive products income (section 3634(b)(1)); and
5. The total assets of the CPF shall be the greater of the assets related to the provision of competitive products calculated under section 2011(h) or the percentage of total Postal Service revenues and receipts from competitive products times the Postal Service's total assets (section 2011(e)(5)). Report at 31.

III. Treasury Report

To develop its recommendations, Treasury discusses both the Postal Service's current costing system and the cost accounting requirements for competitive products under the PAEA. Treasury explains that the Postal Service currently functions under an Activity Based Costing system (ABC system), which it describes as an economic costing system designed to ''report (1) the marginal cost of each class of product and (2) the incremental cost of each class of product compared to all of the other classes of products serviced.'' [3]

Treasury indicates that under the current costing system, average volume variable costs serve as a proxy for marginal costs and further that the Postal Service estimates incremental costs based on the ABC system. Finally, Treasury notes that costs not attributed to postal products or services are classified as institutional costs.

Turning to the PAEA, Treasury's analysis of the statutory cost accounting requirements for competitive products begins with section 3633(a), which requires the Commission to promulgate regulations to:

1. Prohibit the subsidization of competitive products by market dominant products;
2. Ensure that each competitive product covers its attributable costs; and
3. Ensure that all competitive products shall collectively cover what the Commission determines to be an appropriate share of the institutional costs of the Postal Service.[4]

Based on these requirements and other PAEA provisions,[5] Treasury concludes that ''the only viable method to begin to address the PAEA requirements for competitive products is to establish a theoretical, regulatory reporting construct under which the [Postal Service] would 'on paper only' analytically segregate and identify the revenue and costs associated with the competitive products * * *'' *Id.* at 4. Regarding the costs, Treasury recommends that the Postal Service attribute costs consistent with the Commission's definition of competitive products. Treasury indicates, however, that more is required ''to calculate a PAEA-compliant, corporate-like income statement or impute an assured income tax.'' *Id.* To achieve these additional requirements, Treasury contends that the Postal Service's cost system will need to be modified ''to provide for the additional assignment of competitive products' costs.'' *Id.*

More specifically, Treasury suggests that, to satisfy the PAEA's five statutory requirements, the modified cost system should have the capability to:

1. Report the costs for competitive products at a more granular level than they are currently;
2. Demonstrate that each competitive product (as defined under the PAEA) covers its attributable costs by pricing each competitive product above its volume-variable or marginal costs;
3. Demonstrate that competitive products are not individually cross-subsidized by the market dominant products by showing that each competitive product's revenues exceed its incremental costs;
4. Ensure that the combined revenues of the competitive products cover an appropriate share of the Postal Service institutional costs; and
5. Enable computation of an assumed Federal income tax on the income of the theoretical Postal Service competitive enterprise. *Id.* at 4–5 (footnotes omitted).

Based on its analysis of the applicable PAEA accounting and tax-related provisions regarding competitive products, Treasury offers nine recommendations.

IV. Issues Regarding Certain Treasury Recommendations

Treasury emphasizes that ''[t]he accounting and income tax approaches described in [its Report] should serve as the starting points for such further discussions and decisions.'' *Id.* at 1. The Report further points out that:

> Given the size and scope of the [Postal Service's] operations as well as the complexity involved in meeting the PAEA accounting and other requirements, Treasury believes that any necessary changes to the existing [Postal Service] costing and other systems should be made incrementally and notes that some may need to be implemented over the long term.

Id. at 1–2.

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[3] *See id.* at 3. The marginal cost (or unit volume variable cost) of a product is the cost of producing an additional unit of output. Marginal cost includes only costs that vary with the level of output and does not account for any fixed costs. If a product's price exceeds its marginal cost at current levels of production, a positive contribution is made toward paying the common costs of production. Incremental or avoidable cost of a product is the total cost incurred as the result of the provision of all units of that product. Incremental cost incorporates all variable and fixed costs specific to a particular product. Thus, if each product covers its avoidable cost then no single product is being cross-subsidized. For a more complete discussion of the incremental cost test, see William J. Baumol, John C. Panzar and Robert D. Willig, *Contestable Markets and the Theory of Industry Structure,* 351–356, 1982.

[4] In Order No. 43, the Commission adopted, *inter alia,* rules governing rates for competitive products pursuant to section 3633. PRC Order No. 43, October 29, 2007.

[5] As noted above, the other statutory requirements concern the computation of an assumed Federal income tax (section 3634(b)) and the ''greater of'' test (section 2011(e)(5)).

The Report acknowledges that the ultimate responsibility and authority for issuing regulations concerning the PAEA accounting practices and CPF income tax requirements rest with the Commission. *Id.* at 1.

The Commission solicits comments from interested persons on any or all aspects of Treasury's Report. In addition, as set out below, the Commission has specific questions about certain Treasury recommendations and invites responses from interested persons to any or all of them. As noted above, initial and reply comments are due 60 days and 90 days, respectively, after publication of this notice in the **Federal Register**.

A. Treasury Recommendation 2

Treasury's second recommendation concerns the development of a theoretical competitive enterprise:

> To enable a practical solution to be developed that could be validated by third parties, a theoretical or 'on paper only' enterprise—[Postal Service] competitive—should be analytically created by assigning to it an appropriate share of all [Postal Service] costs.

Id. at 7.

This recommendation reflects Treasury's conclusion that, based on the five PAEA statutory requirements for competitive products:

> [T]he only viable method to begin to address the PAEA requirements for competitive products is to establish a theoretical, regulatory reporting construct under which the [Postal Service] would 'on paper only' analytically segregate and identify the revenue and costs associated with the competitive products—that is, to treat competitive products as if they were sold by a separate, theoretical enterprise or corporation that shares economies of scale and scope with the market-dominant products.

Id. at 4 (footnote omitted).

Treasury recognizes, but rejects, an alternative approach based on creation of a ''true stand-alone competitive products entity.'' *Id.* at 7; *see also id.* at 6. Treasury rejects this alternative because, *inter alia,* the cost modeling would be costly and take years to develop without likelihood of any corresponding benefits. *Id.*[6]

1. The Commission asks commenters to address Treasury's conclusion that a theoretical enterprise, rather than a stand-alone enterprise, should be constructed. Specifically, commenters are asked to comment on the assumptions, studies, and procedures that would be needed to establish the costs of a stand-alone competitive entity, the time and cost of implementing these studies, and the time and cost of achieving structural separation.

2. To what extent would economies of scale and scope be diminished if the Commission were to require the Postal Service to structurally separate its market dominant from its competitive lines of business?

3. Given the manner in which rates are established under the PAEA, *e.g.*, that market dominant products are subject to a price cap, would structural separation reduce the risk of competitive products being subsidized by market dominant products?

4. If it is decided that establishing a theoretical competitive enterprise is appropriate:

a. What is the appropriate basis for assigning operating and/or capital costs to the theoretical competitive enterprise?

b. Is there a reasonable basis for directly assigning some types or categories of costs to competitive products based on underlying technologies and/or operating procedures? If so, what specific costs should be assigned in this way?

c. Would there be a need to assign other costs not directly assignable (namely, joint and/or fixed costs), and if so, how should such costs be assigned?

d. Would worksharing affect the assignment of costs other than direct costs? If so, how?

5. What role, if any, should the concepts of profit centers and transfer pricing play?

6. Should any Universal Service Obligation costs be assigned to the competitive products category? If not, why not? If so, on what basis?

B. Treasury Recommendation 3

Treasury's third recommendation concerns the cost system that should be used under the PAEA:

> The volume-variable or marginal product costs reported by the [Postal Service] cost system should be used—after the product definition modification required by PAEA—to ensure that the competitive products cover their attributable costs. The reported incremental costs should be used to ensure that cross-subsidization of the competitive products by the market-dominant products is not occurring.

Report at 7.

This recommendation ''relates to the derivation of marginal and incremental costs'' with regard to the Postal Service's costing approach. *Id.* Citing section 3631(b), which defines ''costs attributable'' to mean ''the direct and indirect postal costs attributable to [competitive] product[s] through reliably identified causal relationships'', Treasury suggests that complying with this definition would not require the Postal Service's current cost system to be modified other than to reflect products classified by the Commission as competitive. *Id.* Treasury also assumes that such attributable costs would ''form the appropriate basis for determining the marginal and incremental costs of the competitive products.'' *Id.*[7]

In suggesting modifications to the cost system, Treasury interprets section 3633(a)(1) to mean that the incremental cost test should be applied to each individual competitive product. *Id.* at 3. In Order No. 26, the Commission addressed this statutory provision, endorsing the incremental cost test, but recognizing the need to employ its current test for cross-subsidies. PRC Order No. 26, August 15, 2007, paras. 3040–43. The Commission interpreted section 3633(a)(1) to mean that the test for cross-subsidies applies collectively to competitive products, not individually to each product. *See* 39 CFR 3015.7(a).

1. Are the Postal Service's current cost systems, after modification for new products, sufficient for allocating costs between competitive and market dominant products? If not, what changes should be made to the cost systems?

2. Should the incremental cost test be applied to individual competitive products or to competitive products as a whole? If the former, what is the basis for determining whether a competitive product that fails the incremental cost test is being subsidized by market dominant or other competitive products?

C. Treasury Recommendation 5

The Treasury's fifth recommendation concerns the cost system that should be employed to assign costs between market dominant and competitive products:

> The current [Postal Service] cost accounting system should be modified so

[6] On January 16, 2008, the Federal Trade Commission (FTC) released its report entitled *Accounting for Laws that Apply Differently to the United States Postal Service and Private Competitors* (FTC Report). Among other things, the FTC Report discusses corporatization of assets associated with production of competitive products. FTC Report at 93–98. Commenters may address matters raised by the FTC Report as relates to the issues raised by Treasury's Report, *e.g.*, establishing a stand-alone competitive products entity.

[7] Attributable cost is a concept developed by the Commission. Basically, it is equal to the marginal cost of a product plus some specific fixed costs, if any, attributed only to the production of that particular product, *e.g.*, costs associated with Express Mail collection boxes and advertisements.

that all of the costs for [Postal Service's] two lines of business (Market-Dominant and Competitive) can be assigned using cost drivers that capture the causal relationship between the lines of business and their applicable business costs. The remaining unassigned costs should be treated as institutional costs and an appropriate percentage of these institutional costs, which should be defined by the PRC by regulation, should be covered by the theoretical competitive enterprise.

Report at 9.

This recommendation appears to reiterate the principle that attributable costs should be allocated between market dominant and competitive products based on causal relationships. In addition, it urges that an appropriate share of institutional costs should be covered by the theoretical competitive enterprise. Treasury notes that, pursuant to section 3633(a)(3), the Commission has initially set the ''appropriate share of institutional costs'' test at 5.5 percent. Treasury also notes that the requirement that competitive products receive an appropriate share of institutional costs is echoed by section 3622(b)(9), a ratemaking objective applicable to market dominant products (''to allocate the total institutional costs of the Postal Service appropriately between market-dominant and competitive products.'')

1. A significant amount of Postal Service costs are currently classified as institutional, based on the use of cost drivers for cost allocation in rate analyses with most non-volume variable costs being assigned as institutional. Should any additional types of drivers and/or different types of cost attribution approaches be considered in determining costs for the competitive and market dominant lines of business?

2. The Report suggests that in addition to attributing product-specific costs to competitive products, the Postal Service should also attribute what Treasury calls line of business costs that are common to competitive products. *Id.* at 9. This suggestion could be interpreted to mean either that competitive line of business costs are costs shared by all competitive products or costs that may be shared by more than one, but not necessarily all, competitive products. The Commission asks commenters to address the appropriate meaning of line of business costs, including the basis on which to distinguish between market dominant and competitive lines of business.

3. Does the Commission's determination of an ''appropriate share of institutional costs'' under section 3633(c)(3) also satisfy, at least implicitly, section 3622(b)(9)? If not, why not and on what basis should institutional costs be allocated between market dominant and competitive products?

D. Treasury Recommendation 6

Treasury's sixth recommendation concerns revenue reporting requirements for the theoretical competitive enterprise:

Subject to [Postal Service] system modifications to accommodate the new product definitions, the revenue numbers from the existing [Postal Service] financial systems should be used as a basis for both reporting the financial income and the taxable net income of the [Postal Service] Competitive theoretical enterprise. [*Note:* The revenues used to determine the assumed federal income tax might have to be adjusted, as appropriate, to conform to tax code treatment.]

Id.

The PAEA provides that Postal Service revenues should be appropriately measured. *See* 39 U.S.C. 3652(e) and Report at 9. Treasury concludes that the current revenue tracking system employed by the Postal Service is appropriate and does not require changes ''unless the reclassification of postal classes and subclasses to * * * competitive products warrants them.'' *Id.*

1. Is the Postal Service's current revenue reporting system (modified to accommodate new product definitions) adequate for reporting the Postal Service's financial income and net taxable income?

2. If not, what modifications would be necessary?

E. Treasury Recommendation 7

Treasury's seventh recommendation concerns the development of an income statement:

A theoretical [Postal Service] Competitive enterprise income statement, or statement of operations along the lines of the 2007 statement of the operations shown in Figure 1, should be developed. The revenues should be derived from the current [Postal Service] revenue system and process as modified to reflect the new definitions of competitive products. The costs should be the outcome of applying Treasury's above-proposed cost accounting approaches.

Id. For purposes of calculating the assumed Federal income tax of the competitive products, Treasury states that an income statement or statement of operations should be developed as further addressed in recommendation 8.

1. Is what Treasury suggests sufficient for purposes of calculating an assumed Federal income tax on competitive products? If not, what standard (or format) should apply?

2. Please explain why any proposed additional information would be beneficial, and discuss whether the benefit associated with a more detailed statement outweighs the burden of any additional costs imposed by creating a more detailed statement.

F. Treasury Recommendation 8

Treasury's eighth recommendation concerns the calculation of an assumed Federal income tax:

The [Postal Service] should calculate the competitive products' assumed federal income tax using a simplified approach, preferably using a published, regularly updated, tax rate.

Id. at 22. As to the assumed Federal income tax on competitive products, section 3634(a) provides, in pertinent part, as follows:

(1) The term 'assumed Federal income tax on competitive products income' means the net income tax that would be imposed by chapter 1 of the Internal Revenue Code of 1986 on the Postal Service's assumed taxable income from competitive products for the year; and

(2) the term 'assumed taxable income from competitive products', with respect to a year, refers to the amount representing what would be the taxable income of a corporation under the Internal Revenue Code of 1986 for the year, if—

(A) the only activities of such corporation were the activities of the Postal Service allocable under section 2011(h) to competitive products; and

(B) the only assets held by such corporation were the assets of the Postal Service allocable under section 2011(h) to such activities.

In section 2 of the Report, Treasury discusses the numerous considerations that influence the calculation of an assumed Federal income tax on competitive products income. *Id.* at 11–23. It identifies two general approaches, complex or simplified, that could be used for this purpose. *Id.* at 23–24. Treasury endorses the simplified approach, notwithstanding that it ''would require some level of PAEA intent interpretation and scope determination by the appropriate governance bodies.'' *Id.* at 24.

1. Should a simplified approach be used:

a. For calculating an assumed Federal income tax?

b. If so, what tax rate should be used and why?

c. Should the tax rate be based on an analysis of Postal Service functions, markets, risks, and the performance by similar companies?

d. If similar companies are considered relevant, then how does one determine similarity?

2. Would use of a simplified approach require any changes to the Postal Service's cost systems and/or

accounting procedures not addressed in the Report? If so, please elaborate.

3. If a simplified approach should not be used, what approach should be used and why?

Section 3 of the Report (at 25–29) addresses difficulties with identifying and valuing assets and liabilities of the CPF, noting, for example, that efforts to determine each asset's theoretical enterprise origin and usage could be a significant undertaking that, in any event, might yield less than satisfactory results. *Id.* at 26. Treasury suggests four potential methods to attempt to assign assets to the theoretical competitive enterprise. *Id.* at 26–27. It notes that one of its methods is similar to the approach in section 2011(e)(5)(B). *Id.* at 27. Treasury observes that the PAEA does not contain a similar test for assigning liabilities. *Id.* at 29. Recognizing the significant tax implications raised by the various methods, Treasury suggests that ''[a] possible approach to simplifying the assumed tax calculation to maximize net income after taxes and still meet the PAEA 'shall be the greater of' total assets CPF quantification test, is to use the theoretical [Postal Service] Competitive enterprise income before taxes and apply an appropriate, set effective tax rate.'' *Id.*

Lastly, Treasury indicates that the CPF should be subject to a reasonable level of management and reporting oversight and, further that the reporting should be subject to independent review to ensure that it is fairly stated in all material respects. *Id.*

1. Does the PAEA allow a simplified approach to assigning assets to the competitive products fund for financial disclosure purposes and/or calculating an assumed Federal income tax?

2. If a simplified approach is allowed, should it be used?

3. Section 3 of the Report notes that the PAEA does not define assets, but that the PAEA's requirement to pay principal or interest on obligations issued for the provision of competitive products in section 2011(e)(5) supports the conclusion that it is permissible to define assets as net assets. The Commission asks commenters to address whether or not this is a reasonable assumption.

4. Does the PAEA require an assignment of liabilities to the CPF? If so, on what basis should they be assigned?

5. Should a full set of financial statements, including income statement, balance sheet and statement of cash flow, be prepared for the CPF?

6. What level of oversight should apply to the CPF?

7. What accounting principles should apply to the CPF?

8. What level of independent review of the Postal Service's CPF accounting and financial statements is sufficient and necessary under the PAEA?

9. What type (public or private) of entity would be best suited to perform that independent review?

10. Is there any information, not required to be reported under the PAEA, which should be included in the reports required under section 2011(h)(2)(B)(i)(III)?

V. Public Representative

Section 505 of title 39 requires the designation of an officer of the Commission in all public proceedings to represent the interests of the general public. The Commission hereby designates Patricia A. Gallagher to serve as the Public Representative, representing the interests of the general public. Pursuant to this designation, she will direct the activities of Commission personnel assigned to assist her and, will, upon request, provide their names for the record. Neither Patricia A. Gallagher nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding.

VI. Ordering Paragraphs

It is Ordered:

1. As set forth in the body of this notice, Docket No. PI2008–2 is established for the purpose of receiving comments regarding Treasury's Report and recommendations as well as questions posed by the Commission in response to the Report.

2. Interested persons may submit comments no later than 60 days from the date of publication of this notice in the **Federal Register**.

3. Reply comments also may be filed no later than 90 days from the date of publication of this notice in the **Federal Register**.

4. Patricia A. Gallagher is designated as the Public Representative representing the interests of the general public in this proceeding.

5. The Secretary shall cause this notice to be published in the **Federal Register**.

By the Commission.

Dated: January 28, 2008.

Steven W. Williams,

Secretary.

[FR Doc. E8–1893 Filed 1–31–08; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 401

[Docket No. USCG–2007–0039]

RIN 1625–AB23

2008 Rates for Pilotage on the Great Lakes

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to update the rates for pilotage on the Great Lakes. Based on our review, we propose to adjust the pilotage rates an average of 8.17% for the 2008 shipping season to generate sufficient revenue to cover allowable expenses, target pilot compensation, and returns on investment. We also are proposing a clarification of the duty of pilots and pilot associations to cooperate with lawful authority. This rulemaking promotes the Coast Guard strategic goal of maritime safety.

DATES: Comments and related material must reach the Docket Management Facility on or before March 3, 2008.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2007–0039 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Online: http://www.regulations.gov.*

(2) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(3) *Hand delivery:* Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251.

FOR FURTHER INFORMATION CONTACT: For questions on this proposed rule, call Mr. Michael Sakaio, Program Analyst, Great Lakes Pilotage Branch, Commandant (CG–54122), U.S. Coast Guard, at 202–372–1538, by fax 202–372–1929, or by e-mail at *Michael.Sakaio@uscg.mil.* For questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

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I. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2007–0039), 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 and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. For example, we may ask you to resubmit your comment if we are not able to read your original submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, 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.

B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* at any time and click on ''Search for Dockets,'' and enter the docket number for this rulemaking (USCG–2007–0039) in the Docket ID box, and click enter. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

C. Public Meeting

We do not plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

D. Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://DocketsInfo.dot.gov.*

II. Program History

This notice of proposed rulemaking (NPRM) is issued pursuant to Coast Guard regulations in 46 CFR Chapter III, Parts 401–404. Those regulations implement the Great Lakes Pilotage Act of 1960, 46 U.S.C. Chapter 93, which requires foreign-flag vessels and U.S.-flag vessels in foreign trade to use federally registered Great Lakes pilots while transiting the St. Lawrence Seaway and the Great Lakes system, and which requires the Secretary of Homeland Security to ''prescribe by regulation rates and charges for pilotage services, giving consideration to the public interest and the costs of providing the services.'' 46 U.S.C. 9303(f).

The U.S. waters of the Great Lakes and the St. Lawrence Seaway are divided into three pilotage Districts. Pilotage in each District is provided by an association certified by the Director of Great Lakes Pilotage to operate a pilotage pool. It is important to note that, while the Coast Guard sets rates, it does not control the actual compensation that pilots receive. This is determined by each of the three District associations, which use different compensation practices.

District One, consisting of Areas 1 and 2, includes all U.S. waters of the St. Lawrence River and Lake Ontario. District Two, consisting of Areas 4 and 5, includes all U.S. waters of Lake Erie, the Detroit River, Lake St. Clair, and the St. Clair River. District Three, consisting of Areas 6, 7, and 8, includes all U.S. waters of the St. Mary's River, Sault Ste. Marie Locks, and Lakes Michigan, Huron, and Superior. Area 3 is the Welland Canal, which is serviced exclusively by the Canadian Great Lakes Pilotage Authority and, accordingly, is not included in the U.S. rate structure. Areas 1, 5, and 7 have been designated by Presidential Proclamation, pursuant to the Great Lakes Pilotage Act of 1960, to be waters in which pilots must at all times be fully engaged in the navigation of vessels in their charge. These waters were ''designated'' because they are difficult waters to navigate. Areas 2, 4, 6, and 8 have not been so designated because they are open bodies of water. Under the Great Lakes Pilotage Act of 1960, pilots assigned to vessels in these areas are only required to ''be on board and available to direct the navigation of a vessel at the discretion of and subject to the customary authority of the master.'' 46 U.S.C. 9302(a)(1)(A) and (B).

The Coast Guard pilotage regulations require annual reviews of pilotage rates and the setting of new rates at least once every five years, or sooner, if annual

reviews show a need. 46 CFR 404.1. To assist in calculating pilotage rates, the pilotage associations are required to submit to the Coast Guard annual financial statements prepared by certified public accounting firms. In addition, every fifth year, in connection with the mandatory rate adjustment, the Coast Guard contracts with an independent accounting firm to conduct a full audit of the accounts and records of the pilotage associations and prepare and submit financial reports relevant to the ratemaking process. In those years when a full ratemaking is conducted, the Coast Guard generates the pilotage rates using Appendix A to 46 CFR Part 404. Between the five-year full ratemaking intervals, the Coast Guard annually reviews the pilotage rates using Appendix C to Part 404, and adjusts rates when deemed appropriate. Terms and formulas used in Appendix A and Appendix C are defined in Appendix B to Part 404.

The last full ratemaking using the Appendix A methodology was concluded on April 3, 2006 (71 FR 16501). Rates for the 2007 shipping season were adjusted based on an Appendix C review (interim rule, 72 FR 8115, Feb. 23, 2007; final rule, 72 FR 53158, Sep. 18, 2007). The present rulemaking proposes rate adjustments for the 2008 shipping season, based once again on an Appendix C review.

III. Purpose of the Proposed Rule

The pilotage regulations require that pilotage rates be reviewed annually. If the annual review shows that pilotage rates are within a reasonable range of the base target pilot compensation set in the previous ratemaking, no adjustment to the rates will be initiated. However, if the annual review indicates that an adjustment is necessary, then the Coast Guard will establish new pilotage rates pursuant to 46 CFR 404.10 and applying either Appendix A or Appendix C.

A. Proposed Pilotage Rate Changes—Summarized

The Appendix C ratemaking methodology is intended for use during the years between Appendix A full ratemaking reviews and adjustments. This section summarizes the rate changes proposed for 2008, and then discusses in detail how the proposed changes were calculated under Appendix C. We are proposing an average increase of 8.17 percent across all Districts over the last pilotage rate adjustment. Table 1 summarizes the rate increases proposed for each Area.

TABLE 1.—2008 AREA RATE CHANGES

If pilotage service is required in:	Then the percentage increases over the current rate is:
Area 1 (Designated waters)	7.78
Area 2 (Undesignated waters)	8.41
Area 4 (Undesignated waters)	8.50
Area 5 (Designated waters)	7.98
Area 6 (Undesignated waters)	8.37
Area 7 (Designated waters)	7.83
Area 8 (Undesignated waters)	8.31

Rates for ''Cancellation, delay or interruption in rendering services (§ 401.420)'' and ''Basic rates and charges for carrying a U.S. pilot beyond [the] normal change point, or for boarding at other than the normal boarding point (§ 401.428)'' have been increased by 8.17 percent. These changes are the same in every Area.

B. Calculating the Rate Adjustment

The Appendix C ratemaking calculation involves eight steps:

Step 1: Calculate the total economic costs for the base period (*i.e.* pilot compensation expense plus all other recognized expenses plus the return element) and divide by the total bridge hours used in setting the base period rates;

Step 2: Calculate the ''expense multiplier,'' the ratio of other expenses and the return element to pilot compensation for the base period;

Step 3: Calculate an annual ''projection of target pilot compensation'' using the same procedures found in Step 2 of Appendix A;

Step 4: Increase the projected pilot compensation in Step 3 by the expense multiplier in Step 2;

Step 5: Adjust the result in Step 4, as required, for inflation or deflation;

Step 6: Divide the result in Step 5 by projected bridge hours to determine total unit costs;

Step 7: Divide prospective unit costs in Step 6 by the base period unit costs in Step 1; and

Step 8: Adjust the base period rates by the percentage changes in unit cost in Step 7.

The base data used to calculate each of the eight steps comes from the 2007 Appendix C review. The Coast Guard also used the most recent union contracts between the American Maritime Officers' (AMO) union and vessel owners and operators on the Great Lakes to determine target pilot compensation. Bridge hour projections for the 2008 season have been obtained from historical data, pilots, and industry. Bridge hours are the number of hours a pilot is aboard a vessel providing pilotage service. All documents and records used in this rate calculation have been placed in the public docket for this rulemaking and are available for review at the addresses listed under **ADDRESSES**.

Some values may not total exactly due to format rounding for presentation in charts and explanations in this section. The rounding does not affect the integrity or truncate the real value of all calculations in the ratemaking methodology described below.

Step 1: Calculate the total economic cost for the base period. In this step, for each Area, we add the total cost of target pilot compensation, all other recognized expenses, and the return element (net income plus interest). We divide this sum by the total bridge hours for each Area. The result is the cost in each Area of providing pilotage service per bridge hour. Tables 2 through 4 summarize the Step 1 calculations:

TABLE 2.—TOTAL ECONOMIC COST FOR BASE PERIOD, DISTRICT ONE

	Area 1 St. Lawrence River	Area 2 Lake Ontario	Total District One
Base operating expense	$431,313	$436,283	$867,596
Base target pilot compensation	+$1,368,253	+$825,760	+2,194,013
Base return element	+$8,802	+$13,493	+$22,295
Subtotal	=$1,808,368	=$1,275,536	=$3,083,904
Base bridge hours	÷5,661	÷7,993	÷13,654
Base cost per bridge hour	=$319.44	=$159.58	=$225.86

TABLE 3.—TOTAL ECONOMIC COST FOR BASE PERIOD, DISTRICT TWO

	Area 4 Lake Erie	Area Southeast Shoal to Port Huron, MI	Total District Two
Base operating expense	$499,328	$737,052	$1,236,380
Base target pilot compensation	+$825,760	+$1,596,295	+$2,422,055
Base return element	+$26,280	+$30,711	+$56,991
Subtotal	=$1,351,368	=$2,364,058	=$3,715,426
Base bridge hours	÷8,490	÷6,395	÷14,885
Base cost per bridge hour	=$159.17	=$369.67	=$249.61

TABLE 4.—TOTAL ECONOMIC COST FOR BASE PERIOD, DISTRICT THREE

	Area 6 Lakes Huron and Michigan	Area 7 St. Mary's River	Area 8 Lake Superior	Total District Three
Base operating expense	$810,612	$319,193	$511,262	$1,641,067
Base target pilot compensation	+$1,651,520	+$912,168	+$1,156,064	+$3,719,752
Base return element	+$33,776	+$9,872	+$15,812	+$59,460
Subtotal	=$2,495,908	=$1,241,233	=$1,683,138	=$5,420,279
Base bridge hours	÷18,000	÷3,863	÷11,390	÷33,253
Base cost per bridge hour	=$138.66	=$321.50	=$147.77	=$163.00

Step 2. Calculate the expense multiplier. In this step, for each Area, we add the base operating expense and the base return element. Then we divide the sum by the base target pilot compensation to get the expense multiplier for each Area. The expense multiplier expresses, in percentage form, the relationship between all non-pilot compensation, all expenses, and pilot compensation for the base period. Tables 5 through 7 show the Step 2 calculations.

TABLE 5.—EXPENSE MULTIPLIER, DISTRICT ONE

	Area 1 St. Lawrence River	Area 2 Lake Ontario	Total District One
Base operating expense	$431,313	$436,283	$867,596
Base return element	+$8,802	+$13,493	+$22,295
Subtotal	=$440,115	=$449,776	=$889,891
Base target pilot compensation	÷$1,368,253	÷$825,760	÷$2,194,013
Expense multiplier	=.32166	=.54468	=.40560

TABLE 6.—EXPENSE MULTIPLIER, DISTRICT TWO

	Area 4 Lake Erie	Area 5 Southeast Shoal to Port Huron, MI	Total District Two
Base operating expense	$499,328	$737,052	$1,236,380
Base return element	+$26,280	+$30,711	+$56,991

TABLE 6.—EXPENSE MULTIPLIER, DISTRICT TWO—Continued

	Area 4 Lake Erie	Area 5 Southeast Shoal to Port Huron, MI	Total District Two
Subtotal	=$525,608	=$767,763	=$1,293,371
Base target pilot compensation	÷$825,760	÷$1,596,295	÷$2,422,055
Expense multiplier	=.63651	=.48097	=.53400

TABLE 7.—EXPENSE MULTIPLIER, DISTRICT THREE

	Area 6 Lakes Huron and Michigan	Area 7 St. Mary's River	Area 8 Lake Superior	Total District Three
Base operating expense	$810,612	$319,193	$511,262	$1,641,067
Base return element	+$33,776	+$9,872	+$15,812	+$59,460
Subtotal	=$844,388	=$329,065	=$527,074	=$1,701,247
Base target pilot compensation	÷$1,651,520	÷$912,168	÷$1,156,064	÷$3,719,752
Expense multiplier	=.51128	=.36075	=.45592	=.45716

Step 3. Calculate annual projection of target pilot compensation. In this step, which duplicates Step 2 from Appendix A, we determine the new target rate of compensation and the new number of pilots needed in each pilotage Area, in order to determine the new target pilot compensation for each Area.

a. Determine new target rate of compensation. Target pilot compensation for pilots is based on the average annual compensation of first mates and masters on U.S. Great Lakes vessels. Compensation includes wages and benefits. For pilots in undesignated waters, we approximate the first mates' compensation, and in designated waters we approximate the masters' compensation (first mates' wages multiplied by 150% plus benefits). To determine first mates' and masters' average annual compensation, we use data from the most recent AMO union contracts with the U.S. companies engaged in Great Lakes shipping. Where different AMO union agreements apply to different companies, we apportion the compensation provided by each agreement according to the percentage of tonnage represented by companies under each agreement.

Our research for the 2007 ratemaking showed six companies operating under contract with the AMO union. Three of the six operated under one set of agreements and the other three operated under modified agreements. Since the 2007 ratemaking, one of the six companies has gone out of business, and a second no longer operates under an AMO union contract.

On August 16, 2007, the Coast Guard received two new sets of agreements that updated wage and benefit information for the four companies now operating under AMO union contracts. The agreements involved a 5% wage rate increase effective August 1, 2006 and a 3% increase effective August 1, 2007. Under one set of agreements (''Agreement A''), the daily wage rate increased from $226.96 to $245.46, while under the other set of agreements (''Agreement B'') the daily wage rate was raised from $279.55 to $302.33.

To calculate monthly wages, we apply the new Agreement A and Agreement B monthly multiplier of 49.5 to the daily rate. The new monthly multiplier is decreased from the multiplier of 54 that was contained in the 2003 contracts. It represents 30.5 average working days per month, 16 vacation days, and 3 bonus days. To calculate average annual compensation, we multiply monthly figures by 9 months, the length of the Great Lakes shipping season.

Table 8 shows new wage calculations based on Agreements A and B.

TABLE 8.—WAGES

Monthly component	Pilots on undesignated waters	Pilots on designated waters (undesignated × 150%)
AGREEMENT A:		
$245.46 daily rate × 49.5 days	$12,150	$18,225
AGREEMENT A:		
Monthly total × 9 months = total wages	109,352	164,029
AGREEMENT B:		
$302.33 daily rate × 49.5 days	14,965	22,488
AGREEMENT B:		
Monthly total × 9 months = total wages	134,688	202,032

Benefits under Agreements A and B include a health contribution rate of $66.69 per man-day and a pension plan contribution rate of $33.35 per man-day under Agreement A, and $43.55 per man-day under Agreement B. The AMO 401K employer matching rate remained at 5% of the wage rate. A clerical contribution included in the 2003 contracts was eliminated. Per the AMO union, the multiplier used to calculate monthly benefits is 45.5 days.

TABLE 9.—BENEFITS

Monthly component	Pilots on undesignated waters	Pilots on designated waters
AGREEMENT A:		
Employer contribution, 401(K) plan (Monthly Wages × 5%)	$607.51	$911.27
Pension = $33.35 × 45.5 days	$1,517.43	$1,517.43
Health = $66.69 × 45.5 days	$3,034.40	$3,034.40
AGREEMENT B:		
Employer contribution, 401(K) plan (Monthly Wages × 5%)	$748.27	$1,122.40
Pension = $43.55 × 45.5 days	1,981.53	1,981.53
Health = $66.69 × 45.5 days	$3,034.40	$3,034.40
AGREEMENT A:		
Monthly total benefits	=$5,159.33	=$5,463.09
AGREEMENT A:		
Monthly total benefits × 9 months	=$46,434	=$49,168
AGREEMENT B:		
Monthly total benefits	=$5,764.19	=$6,138.32
AGREEMENT B:		
Monthly total benefits × 9 months	=$51,878	=$55,245

Table 10 totals the wages and benefits under each agreement.

TABLE 10.—TOTAL WAGES AND BENEFITS UNDER EACH AGREEMENT

	Pilots on undesignated waters	Pilots on designated waters
AGREEMENT A: Wages	$109,352	$164,029
AGREEMENT A: Benefits	+$46,434	+$49,168
AGREEMENT A: Total	=$155,786	=$213,196
AGREEMENT B: Wages	$134,688	$202,032
AGREEMENT B: Benefits	+$51,878	+$55,245
AGREEMENT B: Total	=$186,566	=$257,277

Table 11 shows that, for the four U.S. Great Lakes shipping companies currently operating under AMO union contracts, approximately 29% of their total deadweight tonnage belongs to companies operating under Agreement A, and approximately 71% belongs to companies operating under Agreement B.

TABLE 11.—DEADWEIGHT TONNAGE BY AMO UNION AGREEMENT

Company	Agreement A	Agreement B
American Steamship Company		664,215
Mittal Steel USA, Inc.		96,544
HMC Ship Management	12,656	
Key Lakes, Inc.	303,145	
Total tonnage, each agreement	315,801	760,759
Percent tonnage, each agreement	315,801 ÷1,076,560 =29.3343%	760,759 ÷ 1,076,560 =70.6657%

Table 12 applies the percentage of tonnage represented by each agreement to the wages and benefits provided by each agreement, to determine the projected target rate of compensation on a tonnage-weighted basis.

TABLE 12.—PROJECTED TARGET RATE OF COMPENSATION

	Undesignated waters	Designated waters
AGREEMENT A: Total wages and benefits × percent tonnage	$155,786 × 29.3343% = $45,699	$213,196 × 29.3343% = $62,540
AGREEMENT B: Total wages and benefits × percent tonnage	$186,566 × 70.6657% = $131,838	$257,277 × 70.6657% = $181,807

TABLE 12.—PROJECTED TARGET RATE OF COMPENSATION—Continued

	Undesignated waters	Designated waters
Total weighted average wages and benefits = projected target rate of compensation	$45,699 + $131,838 = $177,537	$62,540 + $181,807 = $244,346

b. Determine number of pilots needed. Subject to adjustment by the Director of Great Lakes Pilotage to ensure uninterrupted service, we determine the number of pilots needed in each Area by dividing each Area's projected bridge hours, either by 1,000 (designated waters) or by 1,800 (undesignated waters).

Bridge hours are the number of hours a pilot is aboard a vessel providing pilotage service. Projected bridge hours are based on the vessel traffic that pilots are expected to serve. Based on historical data and information provided by pilots and industry, the Coast Guard projects that traffic for the 2008 navigation season will remain the same as it did in 2007.

Table 13 shows the projected bridge hours needed for each Area, and the total number of pilots needed after dividing those figures either by 1,000 or 1,800 and rounding up to the next whole pilot:

TABLE 13.—NUMBER OF PILOTS NEEDED

Pilotage area	Projected 2008 bridge hours	Divided by 1,000 (designated waters) or 1,800 (undesignated waters)	Pilots needed (total = 44)
Area 1	5,661	1,000	6
Area 2	7,993	1,800	5
Area 4	8,490	1,800	5
Area 5	6,395	1,000	7
Area 6	18,000	1,800	10
Area 7	3,863	1,000	4
Area 8	11,390	1,800	7

c. Determine the projected target pilot compensation for each Area. The projection of new total target pilot compensation is determined separately for each pilotage Area by multiplying the number of pilots needed in each Area by the projected target rate of compensation for pilots working in that Area. Table 14 shows this calculation.

TABLE 14.—PROJECTED TARGET PILOT COMPENSATION

Pilotage area	Pilots needed (total = 44)	Multiplied by target rate of compensation	Projected target pilot compensation
Area 1	6	× $244,346	$1,466,077
Area 2	5	× $177,537	887,684
Total, District One			2,353,761
Area 4	5	× $177,537	887,684
Area 5	7	× $244,346	1,710,424
Total, District Two			2,598,108
Area 6	10	× $177,537	1,775,368
Area 7	4	× $244,346	977,385
Area 8	7	× $177,537	1,242,758
Total, District Three			3,995,511

Step 4: Increase the projected pilot compensation in Step 3 by the expense multiplier in Step 2. This step yields a projected increase in operating costs necessary to support the increased projected pilot compensation. Table 15 shows this calculation.

TABLE 15.—PROJECTED PILOT COMPENSATION, MULTIPLIED BY THE EXPENSE MULTIPLIER EQUALS PROJECTED OPERATING EXPENSE

Pilotage area	Projected target pilot compensation	Multiplied by expense multiplier	Projected operating expense
Area 1	$1,466,077	× .32166	= $471,581
Area 2	887,684	× .54468	= $483,505
Total, District One	2,353,761	× .40560	= $954,685
Area 4	887,684	× .63651	= $565,024
Area 5	1,710,424	× .48097	= $822,655
Total, District Two	2,598,108	× .53400	= $1,387,383
Area 6	1,775,368	× .51128	= $907,709
Area 7	977,385	× .36075	= $352,592
Area 8	1,242,758	× .45592	= $566,600
Total, District Three	3,995,511	× .45716	= $1,826,593

Step 5: Adjust the result in Step 4, as required, for inflation or deflation, and calculate projected total economic cost. Based on data from the U.S. Department of Labor's Bureau of Labor Statistics, we have multiplied the results in Step 4 by a 1.024 inflation factor, reflecting an average inflation rate of 2.4% in ''Midwest Economy—''Consumer Prices'' between 2005 and 2006, the latest years for which data are available. Table 16 shows this calculation and the projected total economic cost.

TABLE 16.—PROJECTED OPERATING EXPENSE, ADJUSTED FOR INFLATION, AND ADDED TO PROJECTED TARGET PILOT COMPENSATION EQUALS PROJECTED TOTAL ECONOMIC COST

Pilotage area	A. projected operating expense	B. increase, multiplied by inflation factor (= A × 1.024)	C. projected target pilot compensation	D. projected total economic cost (= B+C)
Area 1	$471,581	$482,899	$1,466,077	$1,948,977
Area 2	483,505	495,109	887,684	1,382,793
Total, District One	954,685	977,597	2,353,761	3,331,359
Area 4	565,024	578,584	887,684	1,466,268
Area 5	822,655	842,399	1,710,424	2,552,822
Total, District Two	1,387,383	1,420,680	2,598,108	4,018,788
Area 6	907,709	929,494	1,775,368	2,704,862
Area 7	352,592	361,054	977,385	1,338,439
Area 8	566,600	580,198	1,242,758	1,822,956
Total, District Three	1,826,593	1,870,432	3,995,511	5,865,942

Step 6: Divide the result in Step 5 by projected bridge hours to determine total unit costs. Table 17 shows this calculation.

TABLE 17.—PROSPECTIVE (TOTAL) UNIT COSTS

Pilotage area	A. projected total economic cost	B. projected 2008 bridge hours	Prospective (total) unit costs (A divided by B)
Area 1	$1,948,977	5,661	$344.28
Area 2	1,382,793	7,993	173.00
Total, District One	3,331,359	13,654	243.98
Area 4	1,466,268	8,490	172.71
Area 5	2,552,822	6,395	399.19
Total, District Two	4,018,788	14,885	269.99
Area 6	2,704,862	18,000	150.27
Area 7	1,338,439	3,863	346.48
Area 8	1,822,956	11,390	160.05

TABLE 17.—PROSPECTIVE (TOTAL) UNIT COSTS—Continued

Pilotage area	A. projected total economic cost	B. projected 2008 bridge hours	Prospective (total) unit costs (A divided by B)
Total, District Three	5,865,942	33,253	176.40

Step 7: Divide prospective unit costs (total unit costs) in Step 6 by the base period unit costs in Step 1. Table 18 shows this calculation, which expresses the percentage change between the total unit costs and the base unit costs. The results, for each Area, are identical with the percentage increases listed in Table 1.

TABLE 18.—PERCENTAGE CHANGE, PROSPECTIVE VS. BASE PERIOD UNIT COSTS

Pilotage area	A. prospective unit costs	B. base period unit costs	C. percentage change from base (A divided by B; result expressed as percentage)
Area 1	$344.28	$319.44	7.78
Area 2	173.00	159.5	8.41
Total, District One	243.98	225.86	8.02
Area 4	172.71	159.17	8.50
Area 5	399.19	369.67	7.98
Total, District Two	269.99	249.61	8.16
Area 6	150.27	138.66	8.37
Area 7	346.48	321.31	7.83
Area 8	160.05	147.77	8.31
Total, District Three	176.40	163.00	8.22

Step 8: Adjust the base period rates by the percentage change in unit costs in Step 7. Table 19 shows this calculation.

TABLE 19.—BASE PERIOD RATES ADJUSTED BY PERCENTAGE CHANGE IN UNIT COSTS[1]

Pilotage area	A. base period rate	B. percentage change in unit costs (multiplying factor)	C. increase in base rate (A × B%)	D. adjusted rate (A + C, rounded to nearest dollar)
Area 1		7.78 (1.0778)		
Basic pilotage	$13/km, $23/mi		$1.01/km, $1.79/mi	$14/km, $25/mi
Each lock transited	288		22.41	310
Harbor movage	943		73.37	1,016
Minimum basic rate, St. Lawrence River	629		48.94	678
Maximum rate, through trip	2,761		214.81	2,976
Area 2		8.41 (1.0841)		
6-hr. period	477		40.12	517
Docking or undocking	455		38.27	493
Area 4		8.50 (1.0850)		
6 hr. period	641		54.49	695
Docking or undocking	494		41.99	536
Any point on Niagara River below Black Rock Lock	1,261		107.19	1,368
Area 5 between any point on or in:		7.98 (1.0798)		
Toledo or any point on Lake Erie W. of Southeast Shoal	1,004		80.12	1,084
Toledo or any point on Lake Erie W. of Southeast Shoal & Southeast Shoal	1,699		135.58	1,835
Toledo or any point on Lake Erie W. of Southeast Shoal & Detroit River	2,206		176.04	2,382
Toledo or any point on Lake Erie W. of Southeast Shoal & Detroit Pilot Boat	1,699		135.58	1,835
Port Huron Change Point & Southeast Shoal (when pilots are not changed at the Detroit Pilot Boat)	2,959		236.13	3,195

TABLE 19.—BASE PERIOD RATES ADJUSTED BY PERCENTAGE CHANGE IN UNIT COSTS[1]—Continued

Pilotage area	A. base period rate	B. percentage change in unit costs (multiplying factor)	C. increase in base rate (A × B%)	D. adjusted rate (A + C, rounded to nearest dollar)
Port Huron Change Point & Toledo or any point on Lake Erie W. of Southeast Shoal (when pilots are not changed at the Detroit Pilot Boat)	3,428		273.55	3,702
Port Huron Change Point & Detroit River	2,223		177.40	2,400
Port Huron Change Point & Detroit Pilot Boat	1,729		137.97	1,867
Port Huron Change Point & St. Clair River	1,229		98.07	1,327
St. Clair River	1,004		80.12	1,084
St. Clair River & Southeast Shoal (when pilots are not changed at the Detroit Pilot Boat)	2,959		236.13	3,195
St. Clair River & Detroit River/Detroit Pilot Boat	2,223		177.40	2,400
Detroit, Windsor, or Detroit River	1,004		80.12	1,084
Detroit, Windsor, or Detroit River & Southeast Shoal	1,699		135.58	1,835
Detroit, Windsor, or Detroit River & Toledo or any point on Lake Erie W. of Southeast Shoal	2,206		176.04	2,382
Detroit, Windsor, or Detroit River & St. Clair River	2,223		177.40	2,400
Detroit Pilot Boat & Southeast Shoal	1,229		98.07	1,327
Detroit Pilot Boat & Toledo or any point on Lake Erie W. of Southeast Shoal	1,699		135.58	1,835
Detroit Pilot Boat & St. Clair River	2,223		177.40	2,400
Area 6		8.37 (1.0837)		
6 hr. period	479		40.09	519
Docking or undocking	455		38.08	493
Area 7 between any point on or in:		7.83 (1.0783)		
Gros Cap & De Tour	1,718		134.52	1,853
Algoma Steel Corp. Wharf, Sault Ste. Marie, Ont. & De Tour	1,718		134.52	1,853
Algoma Steel Corp. Wharf, Sault Ste. Marie, Ont. & Gros Cap	647		50.66	698
Any point in Sault Ste. Marie, Ont., except the Algoma Steel Corp. Wharf & De Tour	1,440		112.75	1,553
Any point in Sault Ste. Marie, Ont., except the Algoma Steel Corp. Wharf & Gros Cap	647		50.66	698
Sault Ste. Marie, MI & De Tour	1,440		112.75	1,553
Sault Ste. Marie, MI & Gros Cap	647		50.66	698
Harbor movage	647		50.66	698
Area 8		8.31 (1.0831)		
6 hr. period	464		38.56	503
Docking or undocking	441		36.65	478

[1] Rates for ''Cancellation, delay or interruption in rendering services (§ 401.420)'' and ''Basic Rates and charges for carrying a U.S. pilot beyond the normal change point, or for boarding at other than the normal boarding point (§ 401.428)'' are not reflected in this table but have been increased by 8.17% across all areas.

C. Amending 46 CFR 401.700 and 710

The Coast Guard also proposes to amend 46 CFR 401.700 and 401.710 to clarify the obligation imposed on Great Lakes registered pilots and authorized pilotage pools to fully and professionally cooperate in the course of performing their duties with U.S. and Canadian Coast Guard units and personnel, vessel traffic service personnel, and other lawful authority.

This amendment is required because foreign trade vessels piloted by U.S. pilots on the St. Lawrence Seaway and Great Lakes system routinely cross and re-cross the international boundary between the U.S. and Canada. Frequently numerous crossings are made in a single voyage with both sovereigns exercising authority at various points of a transit. The post 9/11 period of heightened security makes it imperative to clearly state the obligation of U.S. Great Lakes pilots and their associations to immediately and professionally comply with any legal directions received, and requests for information, from both U.S. and Canadian law enforcement authority and with those administrative personnel responsible for ensuring the safety and security of the system.

IV. Regulatory Evaluation

Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735, October 4, 1993, requires a determination whether a regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and subject to the requirements of the Executive Order. This rulemaking is not significant under Executive Order 12866 and will not be reviewed by OMB.

The Coast Guard is required to conduct an annual review of pilotage rates on the Great Lakes and, if necessary, adjust these rates to align compensation levels between Great Lakes pilots and industry. (See the ''Background'' section for a detailed explanation of the legal authority and requirements for the Coast Guard to conduct an annual review and provide possible adjustments of pilotage rates on the Great Lakes.) Based on our review, we are proposing an adjustment to the pilotage rates for the 2008 shipping season to generate sufficient revenue to cover allowable expenses, target pilot compensation, and returns on investment.

This proposed rule would implement an 8.17 percent average rate adjustment

per area for the Great Lakes system over the rate adjustment found in the 2007 final rule. These adjustments to Great Lakes pilotage rates meet the requirements set forth in 46 CFR part 404 for similar compensation levels between Great Lakes pilots and industry. They also include adjustments for inflation and changes in association expenses to maintain these compensation levels.

The increase in pilotage rates will be an additional cost for shippers to transit the Great Lakes system. This proposed rule would result in a distributional effect that transfers payments (income) from vessel owners and operators to the Great Lakes' pilot associations through Coast Guard regulated pilotage rates.

The shippers affected by these rate adjustments are those owners and operators of domestic vessels operating on register (employed in the foreign trade) and owners and operators of foreign vessels on a route within the Great Lakes system. These owners and operators must have pilots or pilotage service as required by 46 U.S.C. 9302. There is no minimum tonnage limit or exemption for these vessels. However, the Coast Guard issued a policy position several years ago stating that the statute applies only to commercial vessels and not to recreational vessels.

Owners and operators of other vessels that are not affected by this proposed rule, such as recreational boats and vessels only operating within the Great Lakes system, may elect to purchase pilotage services. However, this election is voluntary and does not affect the Coast Guard's calculation of the rate increase and is not a part of our estimated national cost to shippers.

We reviewed a sample of pilot source forms, which are the forms used to record pilotage transactions on vessels, and discovered very few cases of U.S. Great Lakes vessels (i.e., domestic vessels without registry operating only in the Great Lakes) that purchased pilotage services. There was one case where the vessel operator purchased pilotage service in District One to presumably leave the Great Lakes system. We assume some vessel owners and operators may also choose to purchase pilotage services if their vessels are carrying hazardous substances or were navigating the Great Lakes system with inexperienced personnel. Based on information from the Coast Guard Office of Great Lakes Pilotage, we have determined that these vessels voluntarily chose to use pilots and, therefore, are exempt from pilotage requirements.

We updated our estimates of affected vessels for the proposed rule by using recent vessel characteristics, documentation, and arrival data. We used 2005–2006 vessel arrival data from the National Vessel Movement Center (NVMC) and the Coast Guard's Marine Inspection, Safety, and Law Enforcement (MISLE) system to estimate the average annual number of vessels affected by the rate adjustment to be 217 vessels that journey into the Great Lakes system. These vessels entered the Great Lakes by transiting through or in part of at least one of the three pilotage Districts before leaving the Great Lakes system. These vessels often make more than one distinct stop, docking, loading, and unloading at facilities in Great Lakes ports. Of the total trips for the 217 vessels, there were approximately 917 annual U.S. port arrivals before the vessels left the Great Lakes system, based on 2005–2006 vessel data from the NVMC and MISLE.

We used district pilotage revenues from the independent accountant's reports of the Districts' financial statements to estimate the additional cost to shippers of the rate adjustments in this proposed rule. These revenues represent the direct and indirect pilotage costs that shippers must pay for pilotage services in order to transit their vessels in the Great Lakes. Table 1 shows historical pilotage revenues by District.

TABLE 1.—DISTRICT REVENUES

[$U.S.]

Year	District one	District two	District three	Total
1998	2,127,577	3,202,374	4,026,802	9,356,753
1999	2,009,180	2,727,688	3,599,993	8,336,861
2000	1,890,779	2,947,798	4,036,354	8,874,931
2001	1,676,578	2,375,779	3,657,756	7,710,113
2002	1,686,655	2,089,348	3,460,560	7,236,563

Source: Annual independent accountant's reports of the Districts to the Coast Guard's Office of Great Lake Pilotage.

While the revenues have decreased over time, the Coast Guard adjusts pilotage rates to achieve a target pilot compensation similar to masters and first mates working on U.S. vessels engaged in the Great Lakes trade. Pilotage rates are set by the Coast Guard for revenues to equal the estimated costs of pilotage. Table 2 displays projected costs from the 2006 and 2007 final rules and the 2002 revenue from Table 1.

TABLE 2.—REVENUES AND COSTS THROUGH THE 2007 RATE ADJUSTMENT

[$U.S.][1]

District	District one	District two	District three	Total[2]
2002 District Revenues	1,686,655	2,089,348	3,460,560	7,236,563
2006 Total Projected Economic Cost	2,692,426	3,238,337	4,722,162	10,652,925
2007 Total Projected Economic Cost	3,083,904	3,715,426	5,420,279	12,219,609

[1] For the calculation of the 2006 and 2007 projected economic costs, see the "Discussion of Rule" sections of the 2006 and 2007 final rules published in the **Federal Register**.

[2] Some values may not total due to rounding.

We estimate the additional cost of the rate adjustment in this proposed rule to be the difference between the total revenue needed to cover costs based on the 2007 rate adjustment and the total projected economic cost in this

proposed rule. Table 3 compares projected economic costs in 2007 and costs of the proposed rule to industry by district.

TABLE 3.—RATE ADJUSTMENT FACTORS AND ADDITIONAL COST OF THIS PROPOSED RULE

[$U.S.]

District	District one	District two	District three	Total [1]
Total Projected Economic Cost in 2007	3,083,904	3,715,426	5,420,279	12,219,609
Proposed Rate Adjustment [2]	1.0802	1.0816	1.0822	1.0817
Total Projected Economic Cost in 2008	3,331,359	4,018,788	5,865,942	13,216,089
Additional Revenue Required or Cost of this Rule-making [3]	247,455	303,362	445,663	996,480

[1] Some values may not total due to rounding.
[2] See steps 5(b) and 7 of the ''Calculating the Rate Adjustment'' section of this proposed rule for the ''Proposed Rate Adjustment'' and the ''Total Projected Economic Cost in 2008''.
[3] Additional revenue or cost of this rule = ''Total Projected Economic Cost in 2008''—''Total Projected Economic Cost in 2007''.

After applying the rate change in this proposed rule, the resulting difference between the adjusted economic cost in 2007 and the projected economic cost in 2008 is the annual cost to shippers from this proposed rule. This figure will be equivalent to the total additional payments that shippers will make for pilotage services from this proposed rule.

The annual cost of the rate adjustment in this proposed rule to shippers is approximately $1.0 million (non-discounted). To calculate an exact cost per vessel is difficult because of the variation in vessel types, routes, port arrivals, commodity carriage, time of season, conditions during navigation, and preferences for the extent of pilotage services on designated and undesignated portions of the Great Lakes system. Some owners and operators will pay more and some will pay less depending on the distance and port arrivals of their vessels' trips. However, the annual cost reported above does capture all of the additional cost the shippers face as a result of the rate adjustment in this proposed rule.

In addition to the annual reviews and possible partial rate adjustments, the Coast Guard is required to determine and, if necessary, perform a full adjustment of Great Lakes pilotage rates at a minimum of once every five years. Due to the frequency of the full rate adjustments, we estimated the total cost to shippers of the rate adjustments in this proposed rule over a five-year period instead of a ten-year period. The total five-year (2008–2012) present value cost estimate of this proposed rule to shippers is $4.4 million discounted at a seven percent discount rate and $4.7 million discounted at a three percent discount rate.

For the calculation of the total five-year present value cost estimate, we chose not to discount first-year costs and instead began discounting in the second year, because we anticipate that industry would most likely begin to incur costs immediately upon publication of this proposed rule during the 2008 Great Lakes shipping season which is generally less than a calendar year. We also considered a middle-of-year discounting process to account for the payments occurring over the course of the year but the difference was small considering the overall cost of the proposed rule.

A. Small Entities

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

We expect entities affected by the proposed rule would be classified under the North American Industry Classification System (NAICS) code subsector 483-Water Transportation, which includes one or all of the following 6-digit NAICS codes for freight transportation: 483111-Deep Sea Freight Transportation, 483113-Coastal and Great Lakes Freight Transportation, and 483211-Inland Water Freight Transportation. According to the Small Business Administration's definition, a U.S. company with these NAICS codes and employing less than 500 employees is considered a small entity.

For the proposed rule, we reviewed recent company size and ownership data from 2005–2006 Coast Guard MISLE data and business revenue and size data provided by reference USA and Dunn and Bradstreet. We were able to gather revenue and size data or link the entities to large shipping conglomerates for 22 of the 24 affected entities in the United States. We found that large, mostly foreign-owned, shipping conglomerates or their subsidiaries owned or operated all vessels engaged in foreign trade on the Great Lakes. We assume that new industry entrants will be comparable in ownership and size to these shippers.

There are three U.S. entities affected by the proposed rule that would receive the additional revenues from the rate adjustment. These are the three pilot associations that are the only entities providing pilotage services within the Great Lakes districts. Two of the associations operate as partnerships and one operates as a corporation. These associations are classified with the same NAICS industry classification and small entity size standards described above, but they have far fewer than 500 employees: approximately 65 total employees combined. However, they are not adversely impacted with the additional costs of the rate adjustments, but instead receive the additional revenue benefits for operating expenses and pilot compensation.

Therefore, the Coast Guard has found that this proposed rule would not have a significant impact on a substantial number of U.S. small entities under 5 U.S.C. 605(b). If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this proposed rule would economically affect it.

B. Assistance for Small Entities

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

If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call Mike Sakaio, Great Lakes Pilotage Branch, (CG–54122), U.S. Coast Guard, telephone 202–372–1538 or send him e-mail at *Michael.Sakaio@uscg.mil.* Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

C. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). This rule does not change the burden in the collection currently approved by the Office of Management and Budget (OMB) under OMB Control Number 1625–0086, Great Lakes Pilotage Methodology.

D. 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 because there are no similar State regulations, and the States do not have the authority to regulate and adjust rates for pilotage services in the Great Lakes system.

E. 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 would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Taking of Private Property

This rule would 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.

G. 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.

H. Protection of Children

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

I. 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.

J. 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.

K. 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.

L. Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have made a preliminary determination 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, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(a), of the Instruction, from further environmental documentation. Paragraph 34(a) pertains to minor regulatory changes that are editorial or procedural in nature. This rule adjusts rates in accordance with applicable statutory and regulatory mandates. An ''Environmental Analysis Check List'' is available in the docket where indicated under the ''Public Participation and Request for Comments'' section of this preamble. Comments on this section will be considered before we make the final decision on whether this rule should be categorically excluded from further environmental review.

List of Subjects in 46 CFR Part 401

Administrative practice and procedure, Great Lakes, Navigation (water), Penalties, Reporting and recordkeeping requirements, Seamen.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 46 CFR part 401 as follows:

PART 401—GREAT LAKES PILOTAGE REGULATIONS

1. The authority citation for part 401 continues to read as follows:

Authority: 46 U.S.C. 2104(a), 6101, 7701, 8105, 9303, 9304; Department of Homeland Security Delegation No. 0170.1 46 CFR 401.105 also issued under the authority of 44 U.S.C. 3507

2. In § 401.405, revise paragraphs (a) and (b) to read as follows:

§ 401.405 Basic rates and charges on the St. Lawrence River and Lake Ontario.

* * * * *

(a) Area 1 (Designated Waters):

Service	St. Lawrence River
Basic Pilotage	$14 per Kilometer or $25 per mile. [1]

Service	St. Lawrence River
Each Lock Transited	$310.[1]
Harbor Movage	$1,016.[1]

[1] The minimum basic rate for assignment of a pilot in the St. Lawrence River is $678, and the maximum basic rate for a through trip is $2,976.

(b) Area 2 (Undesignated Waters):

Service	Lake Ontario
Six-Hour Period	$517
Docking or Undocking	493

3. In § 401.407 revise paragraphs (a) and (b) to read as follows:

§ 401.407 Basic rates and charges on Lake Erie and the navigable waters from Southeast Shoal to Port Huron, MI.

* * * * *

(a) Area 4 (Undesignated Waters):

Service	Lake Erie (East of Southeast Shoal)	Buffalo
Six-Hour Period	$695	$695
Docking or Undocking	536	536
Any Point on the Niagara River below the Black Rock Lock	N/A	$1,368

(b) Area 5 (Designated Waters):

Any point on or in	Southeast Shoal	Toledo or any point on Lake Erie west of Southeast Shoal	Detroit River	Detroit Pilot Boat	St. Clair River
Toledo or any port on Lake Erie west of Southeast Shoal	$1,835	$1,084	$2,382	$1,835	N/A
Port Huron Change Point	[1] 3,195	3,702	2,400	1,867	$1,327
St. Clair River	[1] 3,195	N/A	2,400	2,400	1,084
Detroit or Windsor or the Detroit River	1,835	2,382	1,084	N/A	2,400
Detroit Pilot Boat	1,327	1,835	N/A	N/A	2,400

[1] When pilots are not changed at the Detroit Pilot Boat.

4. In § 401.410, revise paragraphs (a), (b), and (c) to read as follows:

§ 401.410 Basic rates and charges on Lakes Huron, Michigan, and Superior, and the St Mary's River.

* * * * *

(a) Area 6 (Undesignated Waters):

Service	Lakes Huron and Michigan
Six-Hour Period	$519
Docking or Undocking	493

(b) Area 7 (Designated Waters):

Area	De Tour	Gros Any	Cap harbor
Gros Cap	$1,853	N/A	N/A
Algoma Steel Corporation Wharf at Sault Ste. Marie, Ontario	1,853	698	N/A
Any point in Sault Ste. Marie, Ontario, except the Algoma Steel Corporation Wharf	1,553	$698	N/A
Sault Ste. Marie, MI	1,553	698	N/A
Harbor Movage	N/A	N/A	$698

(c) Area 8 (Undesignated Waters):

Service	Lake Superior
Six-Hour Period	$503
Docking or Undocking	478

§ 401.420 [Amended]

5. In § 401.420—

a. In paragraph (a), remove the number ''$86'' and add, in its place, the number ''$93''; and remove the number ''$1,349'' and add, in its place, the number ''$1,459''.

b. In paragraph (b), remove the number ''$86'' and add, in its place, the number ''$93''; and remove the number ''$1,349'' and add, in its place, the number ''$1,459''.

c. In paragraph (c)(1), remove the number ''$510'' and add, in its place, the number ''$552''; in paragraph (c)(3), remove the number ''$86'' and add, in its place, the number ''$93''; and, also in paragraph (c)(3), remove the number ''$1,349'' and add, in its place, the number ''$1,459''.

§ 401.428 [Amended]

6. In § 401.428, remove the number ''$520'' and add, in its place, the number ''$562''.

7. Revise § 401.700 to read as follows:

§ 401.700 Operating requirements for U.S. registered pilots.

Each U.S. registered pilot shall—

(a) Provide pilotage service when dispatched by his pool;

(b) Comply with the dispatching orders of the Director under § 401.720(b);

(c) Comply immediately and professionally, consistent with the safe navigation of the vessel, with all lawful requests and directions received from U.S. and Canadian Coast Guard units and personnel, vessel traffic service personnel, and other lawful authority; and

(d) A violation of any of these provisions may be punished in accordance with 46 CFR 401.500 and be grounds for the suspension or revocation of a pilots registration pursuant to 46 CFR 401 subpart F.

8. In § 401.710, revise paragraphs (f) and (g) and add paragraphs (h) and (i) to read as follows:

§ 401.710 Operating requirements for holders of Certificates of Authorization

* * * * *

(f) Comply with all accounting procedures and the reporting requirements in this chapter;

(g) Make available to the Commandant all of its financial and operating records;

(h) Comply immediately and professionally with all lawful requests and directions received from U.S. and Canadian Coast Guard units and personnel, vessel traffic service personnel, and other lawful authority; and

(i) A violation of any of these provisions may be punished in accordance with 46 CFR 401.500 and be grounds for the suspension or revocation of a pilot association's certificate of authorization to operate a pool pursuant to 46 CFR 401.335.

Dated: January 29, 2008.

Brian M. Salerno,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security & Stewardship.

[FR Doc. 08–474 Filed 1–30–08; 8:45am]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 98–120; FCC 07–170]

Carriage of Digital Television Broadcast Signals

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: While the *Third Report and Order* resolves the major questions about material degradation and viewability after the transition, we now seek comment on a number of related issues which were not specifically raised in the *Second Further Notice of Proposed Rulemaking.* Now that the general rules are in place, the Commission believes it is appropriate to move toward an expeditious resolution of these outstanding matters so that all parties will have sufficient time to prepare for compliance with these new rules.

DATES: Comment Date: March 3, 2008. Reply Comment Date: March 17, 2008.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, please contact Lyle Elder, *Lyle.Elder@fcc.gov,* or Eloise Gore, *Eloise.Gore@fcc.gov,* of the Media Bureau, Policy Division, (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's Third Further Notice of Proposed Rule Making (Third FNPRM) in CS Docket No. 98–120, FCC 07–170, adopted September 11, 2007, and released November 30, 2007. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Summary of the Third Notice of Proposed Rule Making

A. Issues Related to Downconversion

1. Channel Placement: Section 614(b)(6) generally provides that commercial television stations carried pursuant to the mandatory carriage provision are entitled to be carried on a cable system on the same channel number on which the station broadcasts over-the-air. Under Section 615(g)(5) noncommercial television stations generally have the same right. The Act also permits commercial and noncommercial television stations to negotiate a mutually beneficial channel position with the cable operator. In the *First Report and Order,* the Commission found that it was unnecessary to place broadcast signals on a specific frequency in order to ensure nondiscriminatory treatment of television stations by cable operators. Instead, the Commission required that channel mapping information be passed through as part of the program and system information protocol (''PSIP''), linking the digital channel number with the appropriate primary video and program-related content. How should these channel positioning rules apply to operators carrying more than one version of a station's signal? We seek comment on this question. For systems that provide analog service, we propose that the analog version be physically located on the appropriate channel as determined by the channel placement rules, and that the version as broadcast appear on that same channel for digital subscribers who can view it. We seek comment on this proposal. We also seek comment on whether it will be technically possible for multiple digital versions to appear on the same channel from a subscriber perspective (e.g., channel 35 in HD for subscribers with HD, and the same channel 35 in SD for subscribers with SD). If so, should we adopt such a requirement?

2. Format: NAB and MSTV raise the point that ''[w]hen digital programming is broadcast in a 16:9 format, downconversion of the signal to analog generally requires that the program be reformatted to fit the 4:3 analog aspect ratio.'' Broadcasters may broadcast not only in different resolutions—HD, ED, SD—but also in different formats—16:9 or 4:3. When a digital signal is downconverted, particularly from HD to analog, it is likely to be a 16:9 signal being adjusted for display on a 4:3 screen. However, at times, particularly during the early years of the post-transition period, even HD broadcasters are likely to occasionally show images in a 4:3 aspect ratio, adding static bars to the edge of the broadcast picture to compensate. How should the downconverted signal be adjusted (letterboxing, centering, etc.), and if the Commission does not adopt a rule, who should make that decision? NAB proposes that, for signals converted at the headend, broadcasters make the determination, and for signals converted at a converter box, the boxes be required to allow the consumer to determine the format (as in the NTIA boxes). NCTA responds with a proposal to allow operators to determine the format of downconverted signals, arguing that operators are best able to determine how to ''serve the needs of their analog viewing customers.'' We seek comment on the appropriate approach for the Commission to take, and the costs and benefits of these proposals and any others offered by commenters.

B. Material Degradation Issues

3. As NAB and MSTV note, the Commission found in 1993 that the material degradation rules apply equally to must carry stations and retransmission consent stations. They argue that this should be the case after the transition as well. NCTA, however, notes that in the *First Report and Order,* the Commission said that:

In the context of mandatory carriage of digital broadcast signals, a cable operator may not provide a digital broadcast signal in a lesser format or lower resolution than that afforded to any digital programmer (e.g., non-broadcast cable programming, other broadcast digital program, etc.) carried on the cable system.

We seek comment on the applicability of the material degradation rules adopted by this Order.

C. Availability of Signals

4. Notice: As discussed above in paragraph 38, we will require that cable operators notify their subscribers if they decide to become an all-digital system. We believe that the existing notice provisions are sufficient to enforce this requirement. We request comment on these rules, and on whether we need more specific rules to govern notice to subscribers.

D. Small Business

5. As we noted in the *Second Further Notice of Proposed Rulemaking (Second FNPRM),* we particularly welcome comments offering alternative rules that would ''minimize the economic impact for small cable operators while still complying with the statutory requirements.'' Several commenters argue that the rules we adopt in the *Third FNPRM* would impose high costs, particularly on small cable companies. ACA states that carriage of a single HD broadcast station could cost as much as $34,000 under our rules. We observe that these estimates appear to involve duplication of equipment, and that 75% of the listed costs are for equipment dealing with format conversion, something not resolved by this Order because it was first raised in comments and which is the subject of this *Third FNPRM, supra.* ACA's estimates are in contrast to the comments of NAB, who describe the costs of downconversion as ''modest.'' We welcome comment on these cost estimates. We also urge commenters to offer alternatives and explain how they would comply with the statute as well as minimize the impact on small operators.

6. The American Cable Association (ACA) offers three proposals, and argues that failing to adopt them, at least as to small cable operators, would cause ''many'' financial failures among independent cable companies.

7. They propose: (1) No change to the material degradation rules; (2) allowing operators to meet the viewability requirement by converting broadcast signals into a format that they can cablecast to all their subscribers; and (3) requiring must-carry broadcasters to pay the cost of any downconversion. The decisions made in the *Third Report and Order* largely track the first two of these proposals. Specifically, we retained the material degradation requirements described in the *First Report and Order* and expressly provided that cable systems may convert digital signals to analog format to be viewable for their subscribers. We also found that operators of systems with an activated channel capacity of 552 MHz or less could seek a waiver from the Commission if they do not have the capacity to carry the additional digital versions of must-carry stations.

We seek comment on whether it would be appropriate to adopt the other rules proposed by ACA, for small cable operators only. Would such rules for small operators comply with the statute?

8. Block Communications offers a viewability proposal essentially identical to ACA's. They suggest a rule that operators be allowed to downconvert must carry digital signals into a format they can deliver to all subscribers; in their case, this would be analog, although in an all-digital system this would presumably be SD. Block proposes that ''[i]f the station wanted more, it could elect retransmission consent and negotiate for it.'' These proposals appear to seek reconsideration of the Commission's long-standing requirement of HD carriage. Although petitions for reconsideration of that requirement remain pending, we seek comment on this approach generally. ACA argues that if an operator provided carriage on identical terms to broadcasters and cable programmers it would not be in violation of Section 614(b)(4)(A). Given our interpretation of the statute set out in the Third Report and Order above, do we have any flexibility to alter the requirements for small cable operators?

9. Finally, ACA's last proposal is for must-carry broadcasters to bear the cost of downconversion. As NAB and MSTV have noted, this is a modest cost. Are the savings this would provide significant for small cable operators? Would the imposition of these costs on small broadcasters counteract the benefit to small business generally?

10. We also seek comment on the system characteristics that would be appropriate for relief; such as, number of subscribers, system capacity or something else. As discussed in the *Second FNPRM,* and in the Initial Regulatory Flexibility Analysis (''IRFA'') at Appendix B, there are at least four different approaches to measuring the size of a cable operator, and resolving this question is essential if the Commission is to consider applying different rules for such operators.

11. Finally, we seek further proposals for means to minimize the impact on small cable operators, whether they be alternative rules, ameliorated timetables, or any other approaches that would conform to the requirements of the statute.

12. The Commission will complete an Order concerning these small cable systems within six months.

E. Other Issues

13. We welcome comment on any other matters relating to material degradation and viewability, and particularly the proper and sufficient application of the rules in this Order.

F. Third Further Notice of Proposed Rulemaking

1. Initial Regulatory Flexibility Analysis

14. As required by the Regulatory Flexibility Act of 1980 (''RFA''), the Commission has prepared an Initial Regulatory Flexibility Analysis (''IRFA'') relating to this *Third Further Notice of Proposed Rulemaking.* The IRFA is set forth in Appendix B of the Order.

2. Initial Paperwork Reduction Act Analysis

15. This *Third Further Notice of Proposed Rulemaking* has been analyzed with respect to the PRA and does not contain proposed information collection requirements. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002.

3. Ex Parte Rules

16. *Permit-But-Disclose.* This proceeding will be treated as a ''permit-but-disclose'' proceeding subject to the ''permit-but-disclose'' requirements under Section 1.1206(b) of the Commission's Rules. *Ex parte* presentations are permissible if disclosed in accordance with Commission Rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required. Additional rules pertaining to

oral and written presentations are set forth in Section 1.1206(b).

4. Filing Requirements

17. *Comments and Replies.* Pursuant to Sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before March 3, 2008, and reply comments on or before March 17, 2008 using: (1) The Commission's Electronic Comment Filing System (''ECFS''), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies.

• *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the 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.

18. *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. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.

19. *Accessibility Information.* To request information in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document can also be downloaded in Word and Portable Document Format (PDF) at: *http://www.fcc.gov.*

G. Additional Information

20. For more information on this *Third Report and Order and Third Further Notice of Proposed Rule Making,* please contact Lyle Elder, *Lyle.Elder@fcc.gov,* or Eloise Gore, *Eloise.Gore@fcc.gov,* of the Media Bureau, Policy Division, (202) 418–2120.

II. Ordering Clauses

21. *It is ordered* that, pursuant to the authority contained in Sections 4, 303, 614, and 615 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 303, 534, and 535, this Third Report and Order and Third Further Notice of Proposed Rule Making *is adopted* and the Commission's rules *are hereby amended* as set forth in Appendix C of the Order.

22. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Third Report and Order and Third Further Notice of Proposed Rule Making, including the Initial and Final Regulatory Flexibility Analyses, to the Chief Counsel for Advocacy of the Small Business Administration.

23. *It is further ordered* that the Commission *shall send* a copy of this Third Report and Order and Third Further Notice of Proposed Rule Making in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–1914 Filed 1–31–08; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 071211828–7557–01]

RIN 0648–AU22

Fisheries in the Western Pacific; Bottomfish and Seamount Groundfish Fisheries; Management Measures in the Main Hawaiian Islands

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would implement management measures for the vessel-based bottomfish fishery in the Main Hawaiian Islands, including requirements for non-commercial (recreational and subsistence) permits and data reporting, a closed season, annual total allowable catch limits, and non-commercial bag limits. The proposed action is intended to end the overfishing of bottomfish in the Hawaiian Archipelago.

DATES: Comments must be received on or before March 7, 2008.

ADDRESSES: Comments on the proposed rule, identified by 0648–AU22, may be sent to either of the following addresses:

• Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal *www.regulations.gov*; or

• Mail: William L. Robinson, Regional Administrator, NMFS, Pacific Islands Region (PIR), 1601 Kapiolani Blvd, Suite 1110, Honolulu, HI 96814–4700.

Instructions: All comments received are a part of the public record and will generally be posted to www.regulations.gov without change. All Personal Identifying Information (for example, name, address, etc.) submitted voluntarily by the commenter may be publicly accessible. Do not submit Confidential Business Information, or otherwise sensitive or protected

information. NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

Copies of Amendment 14, including a final environmental impact statement, regulatory impact review, and initial regulatory flexibility analysis, are available from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808–522–8220, fax 808–522–8226.

FOR FURTHER INFORMATION CONTACT: Karla Gore, NMFS PIR, 808–944–2273.

SUPPLEMENTARY INFORMATION:

Electronic Access

This proposed rule is accessible via the World Wide Web at the Office of the **Federal Register**'s web site *www.gpoaccess.gov/fr/*.

Background

Bottomfish fishing in Hawaii is managed under the Fishery Management Plan for the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region (Bottomfish FMP), which was developed by the Council and implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Hawaii bottomfish are managed as a single archipelago-wide multi-species stock complex (bottomfish complex). The bottomfish complex is comprised of certain deep-slope snappers, groupers, and jacks. Fisheries and management programs for Hawaiian bottomfish operate in two large geographic areas--the Northwestern Hawaiian Islands (NWHI) and the main Hawaiian Islands (MHI).

Fishermen use lines with baited hooks to target bottomfish over deep bottom slopes. Fishing trips are usually a day or less, and most bottomfish fishermen also participate in pelagic fisheries (e.g., trolling for tunas, marlins, and related species). Except for a few full-time commercial bottomfish fishermen, most fish for bottomfish no more than 60 days a year.

Data from the Hawaii commercial bottomfish fishery are collected through the State of Hawaii commercial fishing report program. In 2003, the most recent year for which data are available, there were currently about 380 vessels active in the commercial bottomfish fishery. The total 2003 ex-vessel revenue from the commercial bottomfish fishery in the MHI was estimated at $1.46 million for landings of 273,000 lb (123,831 kg).

There is currently no mandatory permitting or data reporting requirement for non-commercial fishing. Some data on the non-commercial bottomfish fishery are collected through surveys. NMFS estimates that, based on the State boat registration program and independent surveys, 800–5,000 fishermen participate in the non-commercial bottomfish fishery.

NMFS, on behalf of the Secretary of Commerce, determined that overfishing is occurring on the bottomfish complex in the Hawaiian Archipelago, with the primary problem being excessive fishing mortality on seven deep water species (the ''Deep 7'' species) in the MHI. The Deep 7 species are onaga (*Etelis coruscans*), ehu (*E. carbunculus*), gindai (*Pristipomoides zonatus*), kalekale (*P. sieboldii*), opakapaka (*P. filamentosus*), lehi (*Aphareus rutilans*), and hapu'upu'u (*Epinephelus quernus*).

On May 27, 2005, NMFS notified the Council of the overfishing and requested the Council to take appropriate action to end the overfishing (70 FR 34452, June 14, 2005). In response, in May 2006, the Council prepared an FMP amendment and draft regulations that would have reduced fishing mortality on the Deep 7 species by 15 percent, the reduction indicated by the stock assessment at that time.

In September 2006, before the Council amendment was finalized, NMFS updated the status of bottomfish stocks using 2004 data, and concluded that overfishing was still occurring and that bottomfish fishing effort in the MHI would have to be reduced by 24 percent from the 2004 level to bring archipelago-wide bottomfish fishing mortality down to the maximum fishing mortality threshold.

To immediately address the overfishing situation, the Council requested that NMFS close the Hawaii non-commercial and commercial bottomfish fisheries during the summer of 2007. NMFS promulgated an interim rule that closed Federal waters around the MHI to commercial and non-commercial bottomfish fishing for the Deep 7 species from May 15 though September 30, 2007 (72 FR 27065; May 17, 2007). The State of Hawaii also implemented a complementary interim closed season for State waters during the same period.

The Council further developed Amendment 14 and management measures designed to prevent overfishing, commensurate with the 2006 revised bottomfish stock assessment. This proposed rule is intended to end overfishing of the bottomfish stocks around the Hawaiian Archipelago, reduce the fishing mortality for the Deep 7 species in the MHI by approximately 24 percent in 2008 and establish a mechanism (annual TAC) to respond to future changes in stock status, and improve data collection from non-commercial bottomfish fisheries in Federal waters around the MHI.

The proposed rule would implement several management measures for vessel-based bottomfish fishing in the MHI. First, a Federal bottomfish permit would be required for all vessel-based non-commercial fishing for any bottomfish management unit species (not just Deep 7 species) in Federal waters around the MHI. All non-commercial bottomfish fishermen who fish from vessels would be required to obtain this permit by the start of the 2008–09 fishing year (i.e., September 1, 2008). There would be a fee for the permits, and while the exact cost of the permit has not been determined at this time, it would be less than $80.

Second, the proposed rule would require operators of non-commercial fishing vessels to submit daily Federal logbooks that document bottomfish fishing effort and catch for each fishing trip. The data from these logbooks would be the basis for calculating non-commercial fishing effort and harvest of bottomfish management unit species, bycatch, and interactions with protected species.

Third, the proposed rule would implement a closed season from May 1 through August 30, 2008. During this closure, fishing for Deep 7 species would be prohibited in Federal waters. Fishing for bottomfish species other than Deep 7 species would not be prohibited during the closed season. This summer time period was chosen to maximize protection for Deep 7 bottomfish during their spawning season, and to minimize social and economic impacts to fishery participants (other fishing opportunities are available during the summer, e.g., pelagic trolling).

Fourth, the proposed rule would also establish an annual total allowable catch (TAC) for the MHI bottomfish fishery. The TAC would be determined each fishing year using the best available scientific information, commercial and non-commercial fishing data, and other information, and would consider the associated risk of overfishing. NMFS would publish in the **Federal Register** by August 31 the TAC for the upcoming fishing year, and would use other means to notify permit holders of the TAC. When the TAC is reached, or projected to be reached, NMFS would publish a notice in the **Federal Register** and use other means to notify permit holders that the fishery will be closed on a specified date, providing fishermen

with two weeks advance notice of the closure.

The Council set the TAC for the 2007–08 fishing year (October 2007 through April 2008) at 178,000 lb (80,740 kg) of Deep 7 species. This represents a 24–percent reduction from the 2004 reported commercial fleet-wide catch. When the TAC is reached, all fishing for Deep 7 species will be prohibited in Federal waters around the MHI for the remainder of the fishing year. There is no prohibition on fishing for other bottomfish species throughout the year.

Lastly, the proposed rule would implement Federal bottomfish bag limits for non-commercial fishing. Non-commercial fishermen would be allowed to catch, possess, and land as many as five Deep 7 fish combined, per person, per fishing trip in Federal waters. The State of Hawaii also has a similar bag limit for non-commercial fishing.

Classification

Pursuant to section 304 (b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Bottomfish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

Public comment is specifically sought in two areas: (1) the potential impacts on the regulated public of the vessel identification requirements in 50 CFR 665.16, and (2) requirements for Federal non-commercial permit holders to report their fishing activity and catch in both Federal and state waters.

The Council prepared a final supplemental environmental impact statement (EIS) for Amendment 14 that discusses the impacts on the environment as a result of this proposed rule. The direct, indirect, short-term, long-term, and cumulative impacts of the proposed action were analyzed. The measures are expected to result in a decrease in fishing effort and this is expected to have a positive impact on the Deep 7 species that are experiencing overfishing. No significant adverse impacts are anticipated on sea turtles, marine mammals, seabirds, Essential Fish Habitat, or Habitat Areas of Particular Concern from either bottomfishing activities or as a result of bottomfishing operations changing to pelagic fishing at times when the bottomfish fishery is closed.

The implementation of a TAC as a fishery management measure does have the potential to result in a ''race for the fish'' and high-grading (discarding less desirable fish for more desirable fish). However, the likelihood of either of these scenarios occurring is expected to be low, and if these do occur, the Council and NMFS could take additional action to prevent adverse impacts. The proposed reporting and permitting requirements for non-commercial fishing would provide more comprehensive information for monitoring and managing the bottomfish fishery.

The impact of reduced fishing on non-target fish and bycatch was considered and is not expected to be significant because the measures to end overfishing would also result in a decrease of total catch in both target and non-target fish. Fish mortality due to barotrauma (physical damage to the fish as gases in the gas bladder expand in an uncontrolled manner during rapid ascent) would be reduced through outreach by the Council and NMFS to teach fishermen how to properly resuscitate and release fish. All fish catches would be required to be recorded and counted as part of the TAC, so it is believed that this will help to discourage high-grading.

The proposed rule is not expected to have significant adverse economic impacts. The impacts of the seasonal closure and TAC limitations might be mitigated for the commercial fishermen because they can offset their losses through moving to pelagic fishing during the seasonal closures and after the TAC is reached. The EIS analysis recognizes that during the times the MHI fishery is closed, markets will shift to imports to supply bottomfish, and these markets would need to be re-established by local bottomfish fishermen annually. It is believed that these fluctuations can be managed over time. Non-commercial fishermen that are required to stop fishing once TAC is reached would also be able to fish for non-Deep 7 or pelagic species.

The proposed rule is not expected to result in significant adverse or disproportionate impacts on fishing communities, native Hawaiians, or on members of minority or low-income groups. Adverse impacts would be spread among all fishery participants, and the measures will benefit the fishery in the long run, and provide a sustainable harvest of bottomfish in the future.

Overall, the proposed rule is expected to have positive environmental impacts by ensuring that the bottomfish complex will no longer be subject to overfishing. A copy of the environmental impact statement is available from the Council (see **ADDRESSES**).

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

An initial regulatory flexibility analysis (IRFA) (including a supplemental IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** of the preamble. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities, as follows:

A description of the action, why it is being considered, and the legal basis for this action are contained in the **SUMMARY** and **SUPPLEMENTARY INFORMATION** sections of the preamble to this rule. This rule does not duplicate, overlap, or conflict with other Federal rules. There are no reporting, record-keeping, or other compliance requirements for commercial vessels in the proposed rule. There are no disproportionate economic impacts from this rule based on home port, gear type, or relative vessel size.

Description and Estimate of the Number of Small Entities to Which the Rule Applies

There are approximately 380 vessels engaged in the harvest of bottomfish based on 2000–03 data. The aggregate gross receipts for these vessels in the bottomfish fishery were $1.47 M with average gross receipts per vessel of $3,870 annually. All vessels are considered to be small entities under the Small Business Administration definition of a small entity, i.e., they are engaged in the business of fish harvesting, are not independently-owned or operated, are not dominant in its field of operation, and have annual gross receipts not in excess of $4 million. Therefore, there are no disproportionate economic impacts between large and small entities.

Description of Alternatives

Alternative 1: No Action

Alternative 1 is to take no Federal action; that is, no Federal management measures would be recommended by the Council for approval and implementation at this time. Under this alternative, overfishing in the bottomfish fishery in the Hawaiian Archipelago would continue. This alternative would allow continued open access for entry into the MHI fishery. MHI commercial fishermen would be required to submit catch reports but non-commercial fishermen would not be required to submit catch reports, so the non-commercial catch component of the total harvest would remain unknown.

Alternative 2: May – September Seasonal Closure

Under Alternative 2, an annual summer closure would be implemented from May 1 to September 30 for the entire MHI

bottomfish fishery (both commercial and non-commercial vessels). Targeting, possessing, landing, or selling Deep 7 species caught in the MHI would be prohibited during the closed season. The NWHI bottomfish fishery would remain open until it is phased out in 2011. Bottomfish imports and NWHI bottomfish would be exempt from the prohibition. All vessel operators (both commercial and non-commercial) targeting bottomfish in the MHI would be required to register their vessels on an annual basis and would be required to complete and submit reports of their catch, fishing effort, and area fished. In addition, each vessel would be required to be marked on an unobstructed upper surface with its registration number.

Implementing this seasonal closure for both the commercial and non-commercial fishery, based on mean monthly landings, would result in an approximate 25 percent reduction of fishing mortality, however, parallel State regulations would be needed for this alternative to be feasible and effective. Based on mean monthly landings (1998–2004), a May through September closed period, would meet the current 24 percent target reduction, if significant temporal redistribution of fishing effort does not occur. During the open season the non-commercial component would have to adhere to the existing State non-commercial bag limit of five ehu and/or onaga per trip per person, however, this limit may be changed and/or other species may be added.

Alternative 3: Fleet wide TAC

Alternative 3 would implement a Fleet wide (i.e. combined commercial and non-commercial) TAC designed to result end overfishing. Under this alternative commercial and non-commercial catches would be reported within a specified time limit (as close to 'real time' as is feasible) and a regulatory mechanism would be put into place to close the fishery for the remainder of the fishing year when the combined TAC is reached. The fishing year would begin October 1. The TAC would initially be set at 178,000 pounds of the Deep 7 species (all species combined), representing a 24 percent reduction from the 2004 Fleet wide reported MHI bottomfish catch of these species and would be applied to the MHI commercial Deep 7 bottomfish fishery. Bottomfish fishing would be allowed each fishing year until the TAC was reached, and thereafter no fishing for Deep 7 bottomfish (commercial or non-commercial) would be permitted in the MHI. The TAC would be anticipated to be revised by NMFS in subsequent years based on future stock conditions.

Alternative 4: Commercial TAC and Non-commercial Bag Limit

Alternative 4 would implement a TAC for the commercial fishery only and close that sector when the TAC is reached. The bottomfish fishing year would start on October 1 which makes it more likely the fishery will be open during the important holiday periods and continue until the TAC was reached. The non-commercial sector would have to adhere to the existing State non-commercial bag limit of 5 ehu and/or onaga per trip per person, however, this limit may be changed and/or other species may be added by the State. The TAC would initially be set at 178,000 pounds of the Deep 7 species (all species combined), representing a 24 percent reduction from the 2004 Fleet wide reported MHI bottomfish catch of these species (Moffitt et al. 2006) and would be applied to the MHI commercial Deep 7 bottomfish fishery. Bottomfish fishing would be allowed each fishing year until the TAC was reached, and thereafter no fishing for Deep 7 bottomfish (commercial or non-commercial) would be permitted in the MHI. The TAC would be anticipated to be revised by NMFS in subsequent years based on future stock conditions.

Alternative 5: TAC with Limited Access and Non-commercial Bag Limit

Alternative 5 would implement a commercial TAC in combination with a limited access program for the commercial sector. A limited access system will simplify the determination and monitoring of individual quotas by limiting the number of participants. Only those with limited access permits would be allowed to fish commercially for the Deep 7 bottomfish in the MHI. Each limited access vessel would be required to stop fishing when the TAC was reached. The limited access system would allocate a certain number of permits based on criteria related to past participation in the fishery. The non-commercial catch component would be limited by maintaining the State's existing bag limit but possibly would include other species. The fishing year would begin October 1. The TAC would initially be set at 178,000 pounds of the Deep 7 species (all species combined), representing a 24 percent reduction from the 2004 Fleet wide reported MHI bottomfish catch of these species (Moffitt et al. 2006) and would be applied to the MHI commercial Deep 7 bottomfish fishery. Bottomfish fishing would be allowed each fishing year until the TAC was reached, and thereafter no fishing for Deep 7 bottomfish (commercial or non-commercial) would be permitted in the MHI. The TAC would be anticipated to be revised by NMFS in subsequent years based on future stock conditions.

Alternative 6: Commercial IFQs and Non-commercial Bag Limit

Alternative 6 would allocate individual fishing quotas (IFQs) to all commercial fishermen (open access), whereby each fisherman is required to stop fishing for the reminder of the fishing year when their individual quota was reached. The sum of quotas would be calculated to meet the necessary fishing mortality reduction. In a sense this alternative is also management using a TAC, however, the TAC is subdivided into individual quotas. The number of fishermen would likely be limited to past participants in the fishery and quota amounts would likely be determined based on individual historical catches. Once a commercial fisherman had landed his respective IFQ, that person would not be permitted to fish for, possess, or sell any bottomfish until the following year. The non-commercial component would have to adhere to the existing State non-commercial bag limit of 5 ehu and/or onaga per trip per person, however, this limit may be changed and/or other species may be added by the State. The sum of the IFQs would initially be set at 178,000 pounds of the Deep 7 species (all species combined), representing a 24 percent reduction from the 2004 Fleet wide reported MHI bottomfish catch of these species (Moffitt *et al.*, 2006). The sum of the IFQs would be anticipated to be revised by NMFS in subsequent years based on future stock conditions.

Each MHI commercial bottomfish participant with an IFQ would be issued a set of bottomfish stamps, with each stamp representing a certain number of pounds of bottomfish and all the stamps totaling the fisherman's total IFQ. The fisherman would be required to submit a stamp to the dealer at the point of sale. Once all the stamps were submitted the fisherman would be prohibited from fishing until the next open season. The fisherman's bottomfish stamps would be non-transferable.

Under this alternative, commercial fishermen would be required to continue reporting their catches and to stop fishing when their individual quota was reached. Fishery data would be analyzed in real time to monitor landings versus quotas.

Alternative 7: Phased-in TAC Management (Preferred)

Under Alternative 7, the MHI Deep 7 bottomfish fishery would ultimately be managed under a TAC which would be based on, and applied to, both commercial and non-commercial catches combined. Alternative 7 would utilize a phased-in approach. Phase 1 was to consist of a May-September 2007, seasonal closure of waters around the MHI to both commercial and non-commercial fishing for the Deep 7 species, and this closed period is currently in effect. The 2007 seasonal closure has already been analyzed and implemented for Federal waters by NMFS (72 FR 27065; May 14, 2007) and by the Hawaii DLNR for State waters and is, therefore, not part of the action analyzed in this document.

A commercial Deep 7 TAC of 178,000 lb (80,740 kg, a 24- percent reduction of MHI commercial Deep 7 catches as compared to 2004) would be implemented. Tracking of commercial landings towards this TAC has begun with the reopening of the fishery on October 1, 2007. During the open period, non-commercial catches would continue to be managed by bag limits, however they would be changed from the current five onaga and/or ehu combined per person per trip, to five of any Deep 7 species combined per person per trip and they would be extended into Federal waters via Federal rulemaking under the Council process to ease enforcement. Once commercial Deep 7 landings reached the TAC, both the commercial and non-commercial sectors would be closed.

There would be a Federal permit requirement for all non-commercial fishermen who catch BMUS in the MHI. The operator of a vessel would be responsible for reporting landings of each trip taken. This would provide NMFS with the data needed to calculate and track a non-commercial portion of the overall TAC.

A second seasonal closure to MHI Deep 7 fishing would be implemented from May August 2008, followed by implementation of a combined commercial and non-commercial Deep 7 TAC beginning September 1, 2008. The non-commercial bag limits would be dropped for the 2008 fishery. However, bag limits could be reinstated depending upon the quality of non-commercial catch data provided by fishermen to the State and NMFS so that an appropriate non-commercial TAC may be selected by the Council. In subsequent years (2009 and beyond) the fishing year would begin on September 1 and the MHI Deep 7 fishery would be managed via a commercial and non-commercial TAC calculated by PIFSC to prevent overfishing of these species.

Economic Impacts of the Rule

Preferred Alternative 7

The preferred alternative has, in part, been implemented under the interim rule (72 FR 27065; May 14, 2007) that required a seasonal closure of the MHI bottomfish fishery from May-September, 2007. The interim rule implemented a reduction in landings of 25.3 percent from the biological base year of 2004. The biological marker to stop overfishing in the 2007 fishery required that landings be reduced by at least 24 percent from the 2004 base year. The TAC of 178,000 pounds beginning on October 1,2007 and ending on September 1, 2008 could actually represent a slight increase in economic benefits to individual vessels since the 2007 closure is expected to yield an estimated 25.3 percent reduction from 2004 landings, and the TAC would yield only an estimated 24 percent reduction in revenues assuming that actual prices remained constant between 2004 and 2008 fisheries. This would translate to the possibility of an estimated 5 percent increase in harvest and resulting revenues for the 2008 fishery (October 1, 2007 - September 1, 2008) from the prior year.

Implementation of the TAC could lead to an increased reliance on NWHI bottomfish until this fishery is closed in 2011 and on increased imports of bottomfish. An increased reliance on imported bottomfish would be anticipated to have negative impacts on the entire commercial fishery sector as market channels for fresh MHI bottomfish would be lost and have to be regained each year. Commercial fishery participants may be differentially impacted depending on their ability and willingness to ''race to the fish'' and some may upgrade their vessels (e.g., buy larger vessels or more powerful engines for existing vessels) or fish during adverse weather in order to achieve high catches before the TAC is reached. These responses would be anticipated to result in over-capitalization (i.e., otherwise unnecessary investments to upgrade vessels) of the fishery and threats to the safety of fishery participants. However, given that bottomfish fishing currently occurs without incident throughout the year it is believed that existing participants are aware of and able to deal with all types of weather and sea conditions.

The seasonal closure in 2008 most likely would have little or no impact on landings since the 2008 TAC of 178,000 lb (80,740 kg) should be caught prior to the low demand and historically low supply months of May through August. The future requirement to merge landings by the non-commercial sector with the commercial sector in determining annual harvest could have a substantially adverse economic impact to commercial vessels. This would result from the impact of a unique quota that at this time is given only to commercial vessels but would eventually be shared by both non-commercial and commercial fisheries. Future quotas that would be implemented to prevent overfishing could translate into a reduction in availability of fish to the commercial sector determined exactly by an increase in fish available to the non-commercial sector. Considering that for 2007–08 the non-commercial harvest would not be counted as part of the TAC, the initial merging of non-commercial and commercial sector landings under one TAC, which is scheduled to be implemented in Sept, 2008 could result in large economic losses to the vessels comprising the commercial fleet. For example, if it is determined that the non-commercial sector could take 50 percent of the quota, the existing commercial TAC would be reduced by a defacto 50 percent; if the non-commercial sector could take 30 percent of the quota, the commercial quota would be reduced by a defacto 30 percent, and so on.

Economic losses to the commercial sector could be mitigated somewhat by increases to available harvest from improvements to the bottomfish stock and economic benefits derived from other fisheries or other uses of fishing vessels (opportunity costs), to the extent they exist. Given that there could be sizable adverse economic impacts to the commercial fishery resulting from one TAC for commercial and non-commercial sectors, NMFS will complete a Regulatory Flexibility Analysis to determine the economic impacts to commercial vessels when non-commercial landings are estimated and the September 1, 2008–August 31, 2009 TAC is specified. Additionally, by the time the TAC is specified, NMFS should l have information on the State of Hawaii's intentions regarding their bag limit. Since the universe of affected entities under does not include non-commercial fishers, economic impacts to this group are not considered under this supplemental IRFA. However, those impacts were analyzed by the Council as part of the Regulatory Impact Review to assess regional and national economic impacts.

Impacts of Other Alternatives

In the short term, the no-action alternative would yield substantial economic benefits to individual vessels since they have been fishing under the 2007 seasonal closure which would be lifted, thus, allowing for a 32 percent increase over 2007 anticipated landings. However, if the overfishing of bottomfish in Hawaii is allowed to continue, the potential is high for reaching an ''overfished'' state in the bottomfish fishery, which would require a rebuilding plan under which limited or no bottomfish fishing would be allowed for an extended period of time. An overfished and closed fishery would likely result in unquantifiable economic losses to all bottomfish fishermen, associated businesses, and local fish markets and restaurants. Over time, some of these losses may be stemmed as fishers switch to other fisheries, and fish markets and restaurants secure other sources of fish such as imports and catch from the NWHI.

For alternative 2, based on historical MHI landings, it is estimated that a May through September closure of the MHI Deep 7 bottomfish fishery would result in up to a 25.3 percent reduction in commercial landings of the Deep 7 species as compared to the 2004 baseline identical to the 2007–2008 fishery under the interim closure. Although fishery participants may increase their fishing during the open season, given that summer months have historically been a time of lower bottomfish fishing activity significant increases in effort during the open season are unlikely. The summer closure reduces the availability of ''high end'' fresh bottomfish to the local markets leading to an increased reliance on imported bottomfish during the closed season. This could have negative impacts on the entire commercial fishery sector because market channels for fresh MHI Deep 7 bottomfish would be lost and may have to be regained each year.

Under alternative 3, the requirement to count both commercial and non-commercial harvest toward a future TAC could yield substantially adverse economic impact to individual vessels as discussed above for the preferred alternative. If the TAC is reached, these alternatives could lead to an increased reliance on NWHI bottomfish until this fishery is closed in 2011 and on increased imports of bottomfish. An increased reliance on imported bottomfish would be anticipated to have negative impacts on the entire commercial fishery sector as market channels for fresh MHI bottomfish would be lost and have to be regained each year. Commercial fishery participants may be differentially impacted depending on their ability and willingness to ''race to the fish'' and some may upgrade their vessels (e.g., buy larger vessels or more powerful engines for existing vessels) or fish during adverse weather in order to achieve high catches before the TAC is reached. These responses would be anticipated to result in over-capitalization (i.e., otherwise unnecessary investments to upgrade vessels) of the fishery and threats to the safety of fishery participants. The relative importance of MHI Deep 7 species to commercial participants as a percentage of overall fishing (or household) income is unknown as the total suite of fishing (or other income generating) activities undertaken by individual operations across the year have not been examined to date.

Alternatives 4 through 6 contemplate a TAC with non-commercial bag limits managed by the State of Hawaii. The impact of these alternatives would be similar to the impact of the preferred alternative for the 2007–2008 fishery prior to a co-mingling of the commercial and non-commercial harvest. However, alternatives 5 and 6 which introduce limited access and IFQs, respectively, could mitigate problems associated with common property resources as discussed above for alternative 3.

Ceasing of Business Operations

As discussed above, the co-mingling of commercial and non-commercial harvest to be measured against one TAC for the entire fishery could result in substantial economic loss to commercial fishers. This could conceivably cause some vessels to cease business operations. To address this, NMFS will complete a new RFA prior to implementation of the 2008–2009 TAC.

This proposed rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). These requirements (permit requirements under OMB No. 0648 0490, and data collection requirements under OMB No. 0648–0214) have been submitted to OMB for approval.

The proposed rule would require that all non-commercial, i.e., recreational and subsistence, fishermen who for any bottomfish management unit in Federal waters around Hawaii to obtain permits. Permit eligibility would not be restricted in any way, and permits would be renewable on an annual basis. NMFS anticipates that initial permit applications would require 0.5 hours per applicant, with renewals requiring an additional 0.5 hours annually. NMFS estimates that it may receive and process up to 800–5,000 permit applications each year. Thus, the total collection-of-information burden to fishermen for permit applications is estimated at 400–2,500 hours per year. The cost for Federal permits has not been determined but would represent only the administrative cost and is anticipated to be less than $80 per permit.

The proposed rule would also require either the vessel operator or the vessel owner to submit a catch report for every trip. The estimated time required for completing Federal catch reports is approximately 20 minutes per vessel per fishing trip. Only one logbook report per trip is required and, estimating that 800 to 1,800 vessels would make 10 to 50 trips per year and average 1 day per trip, the program would generate in the range of 8,000 to 90,000 daily fishing logbooks per year. Thus, the total collection-of-information burden estimate for fishing data reporting would be 2,664 to 29,970 hours per year.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to William L. Robinson (see **ADDRESSES**), and by email to *David__Rostker@omb.eop.gov* or by fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 665

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaii, Hawaiian Natives, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: January 28, 2008.

John Oliver,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 665 is proposed to be amended as follows:

PART 665—FISHERIES IN THE WESTERN PACIFIC

1. The authority citation for part 665 continues to read as follows:

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

2. In subpart A, add a new § 665.4 to read as follows:

§ 665.4 Licensing and registration.

Any person who is required to do so by applicable state law or regulation must comply with licensing and registration requirements in the exact manner required by applicable state law or regulation.

3. In § 665.12, revise the definitions of ''Commercial fishing'', ''Fishing year'', and ''Trap'', and add the definitions for ''Hawaii Restricted Bottomfish Species Fishing Year 2007–08'', ''Hawaii Restricted Bottomfish Species Fishing Year 2008–09 and After'', ''Main Hawaiian Islands non-commercial bottomfish permit'', and ''Non-commercial fishing'', in alphabetical order to read as follows:

§ 665.12 Definitions.

* * * * *

Commercial fishing means fishing in which the fish harvested, either in whole or in part, are intended to enter commerce or enter commerce through sale, barter, or trade. All lobster fishing in Crustaceans Permit Area 1 is considered commercial fishing.

* * * * *

Fishing year means the year beginning at 0001 local time on January 1 and ending at 2400 local time on December 31, with the exception of fishing for Hawaii Restricted Bottomfish Species.

* * * * *

Hawaii restricted bottomfish species fishing year 2007–08 means the year beginning at 0001 HST on October 1, 2007, and ending at 2400 HST on April 30, 2008.

Hawaii restricted bottomfish species fishing year 2008–09 and After means the year beginning at 0001 HST on September 1 and ending at 2400 HST on August 31 of the next calendar year.

* * * * *

Main Hawaiian Islands Non-Commercial Bottomfish Fishing Permit means the permit required by § 665.61(a)(4) to own or fish from a vessel that is used in any non-commercial vessel-based fishing, landing, or transshipment of any bottomfish management unit species in the Main Hawaiian Islands Management Subarea. If any fish harvested, either in whole or in part, are intended to enter commerce or enter commerce through sale, barter, or trade, by any participants on a vessel-based fishing trip under this section, the entire trip is considered to be a commercial trip.

Non-commercial fishing means fishing that does not meet the definition of commercial fishing.

* * * * *

Trap means a box-like device used for catching and holding lobsters or fish.

* * * * *

4. In § 665.13, revise paragraph (g)(2) to read as follows:

§ 665.13 Permits and fees.

* * * * *

(g) * * *

(2) Permits issued under subpart E of this part expire at 2400 HST on December 31 with the exception of Main Hawaiian Islands Non-Commercial Bottomfish Fishing Permits, which expire at 2400 HST on August 31.

* * * * *

5. In § 665.14, revise paragraph (a) to read as follows:

§ 665.14 Reporting and recordkeeping.

(a) *Fishing record forms.* (1) *Applicability.* The operator of any fishing vessel subject to the requirements of §§ 665.21, 665.41, 665.61(a)(2), 665.61(a)(3), 665.61(a)(4), 665.81, or 665.602 must maintain on board the vessel an accurate and complete record of catch, effort, and

other data on paper report forms provided by the Regional Administrator, or electronically as specified and approved by the Regional Administrator. All information specified by the Regional Administrator must be recorded on paper or electronically within 24 hours after the completion of each fishing day. The logbook information, reported on paper or electronically, for each day of the fishing trip must be signed and dated or otherwise authenticated by the vessel operator in the manner determined by the Regional Administrator, and be submitted or transmitted via an approved method as specified by the Regional Administrator, and as required by this paragraph (a).

(2) *Timeliness of submission.* (i) If fishing was authorized under a permit pursuant to §§ 665.21, 665.41, 665.61(a)(3), 665.61(a)(4), or 665.81, the original logbook form for each day of the fishing trip must be submitted to the Regional Administrator within 72 hours of the end of each fishing trip, except as allowed in paragraphs (ii) and (iii) of this section.

(ii) If fishing was authorized under a PRIA bottomfish permit pursuant to § 665.61(a)(2), PRIA pelagic troll and handline permit pursuant to § 665.21(f), crustaceans fishing permit for the PRIA (Permit Area 4) pursuant to § 665.41, or a precious corals fishing permit for Permit Area X-P-PI pursuant to § 665.81, the original logbook form for each day of fishing within the PRIA EEZ waters must be submitted to the Regional Administrator within 30 days of the end of each fishing trip.

(iii) If fishing was authorized under a permit pursuant to § 665.602, the original logbook information for each day of fishing must be submitted to the Regional Administrator within 30 days of the end of each fishing trip.

* * * * *

6. In § 665.61, revise paragraphs (a)(1) though (a)(4) to read as follows:

§ 665.61 Bottomfish.

(a) *Applicability.* (1) *Northwestern Hawaiian Islands (NWHI).* The owner of any vessel used to fish for, land, or transship bottomfish management unit species shoreward of the outer boundary of the Northwestern Hawaiian Islands subarea must have a permit issued under this section, and the permit must be registered for use with that vessel. The PIRO will not register a single vessel for use with a Ho'omalu Zone permit and a Mau Zone permit at the same time. Mau Zone permits issued before June 14, 1999, become invalid June 14, 1999, except that a permit issued to a person who submitted a timely application under paragraph (i) of this section is valid until the permit holder either receives a Mau Zone limited entry permit or until final agency action is taken on the permit holder's application. The Ho'omalu Zone and the Mau Zone limited entry systems described in this section are subject to abolition, modification, or additional effort limitation programs.

(2) *Pacific Remote Island Areas (PRIA).* The owner of any vessel used to fish for, land, or transship bottomfish management unit species shoreward of the outer boundary of the Pacific Remote Island Areas subarea must have a permit issued under this section, and the permit must be registered for use with that vessel.

(3) *Guam large vessel.* The owner of any large vessel used to fish for, land, or transship bottomfish management unit species shoreward of the outer boundary of the Guam subarea must have a permit issued under this section, and the permit must be registered for use with that vessel.

(4) *Main Hawaiian Islands non-commercial.* Any person who participates in non-commercial, vessel-based fishing, landing, or transshipment of bottomfish management unit species in the Main Hawaiian Islands Management Subarea is required to obtain a permit issued under this section or a State of Hawaii Commercial Marine License. If any commercial fishing occurs during or as a result of a vessel-based fishing trip under this section, then the fishing trip is considered commercial and not non-commercial.

* * * * *

7. In § 665.62, add new paragraphs (j) through (n), as follows:

§ 665.62 Prohibitions.

* * * * *

(j) Falsify or fail to make or file reports of all fishing activities shoreward of outer boundary of the Main Hawaiian Islands Management Subarea, in violation of §§ 665.3 or 665.14(a).

(k) Own a vessel or fish from a vessel, that is used to fish non-commercially for any bottomfish management unit species in the Main Hawaiian Islands Management Subarea without either a Main Hawaiian Islands non-commercial bottomfish permit or a State of Hawaii Commercial Marine License, in violation of §§ 665.4 or 665.61(a)(4).

(l) Fish for or possess any Hawaii Restricted Bottomfish Species as specified in § 665.71, in the Main Hawaiian Islands Management Subarea after a closure of the fishery, in violation of §§ 665.72 or 665.73.

(m) Sell or offer for sale any Hawaii Restricted Bottomfish Species, as specified in § 665.71, after a closure of the fishery, in violation of §§ 665.72 or 665.73.

(n) Use a vessel to harvest, retain, or land more than a total of five fish (all species combined) identified as Hawaii Restricted Bottomfish Species in § 665.71 by any individual participating in a vessel-based non-commercial fishing trip in the Main Hawaiian Islands Management Subarea in violation of § 665.74.

8. In subpart E, add a new § 665.71 to read as follows:

§ 665.71 Hawaii restricted bottomfish species.

Hawaii restricted bottomfish species means the following species:

Common Name	Common Name	Scientific Name
Silver jaw jobfish	Lehi	*Aphareus rutilans.*
Squirrelfish snapper	Ehu	*Etelis carbunculus.*
Longtail snapper	Onaga	*Etelis coruscans.*
Pink snapper	Opakapaka	*Pristipomoides filamentosus.*
Snapper	Kalekale	*Pristipomoides sieboldii.*
Snapper	Gindai	*Pristipomoides zonatus.*
Sea bass	Hapu'upu'u	*Epinephelus quernus.*

9. In subpart E, add a new § 665.72 to read as follows:

§ 665.72 Total Allowable Catch (TAC) limit.

(a) TAC limits will be set annually for the fishing year by NMFS, as recommended by the Council, based on the best available scientific, commercial, and other information, and taking into account the associated risk of overfishing.

(b) The Regional Administrator shall publish a notice indicating the annual Total Allowable Catch limit in the **Federal Register** by August 31 of each year, and shall use other means to notify permit holders of the TAC limit for the year.

(c) When the TAC limit specified in this section is reached, or projected to be reached based on analyses of available information, the Regional Administrator shall publish a notice to that effect in the **Federal Register** and shall use other means to notify permit holders. The notice will include an advisement that the fishery will be closed beginning at a specified date, which is not earlier than 14 days after the date of filing the closure notice for public inspection at the Office of the **Federal Register**, until the end of the fishing year in which the TAC is reached.

(d) On and after the date specified in § 665.72(c), no person may fish for or possess any Hawaii Restricted Bottomfish Species, as specified in § 665.71, in the Main Hawaiian Islands Management Subarea, except as otherwise allowed by law.

(e) On and after the date specified in § 665.72(c), Hawaii Restricted Bottomfish Species, as specified in § 665.71, harvested from the Main Hawaiian Islands Management Subarea, may not be harvested commercially.

(f) The Hawaii restricted bottomfish species TAC limit for the 2007–08 fishing year is 178,000 lb (80,740 kg).

10. In subpart E, add a new § 665.73 to read as follows:

§ 665.73 Closed seasons.

(a) All fishing for, or possession of, any Hawaii Restricted Bottomfish Species as specified in § 665.71, is prohibited in the Main Hawaiian Islands Management Subarea during May 1, 2008, through August 31, 2008, inclusive. All such species possessed in the Main Hawaiian Islands Management Subarea are presumed to have been taken and retained from that Subarea, unless otherwise demonstrated by the person in possession of those species.

(b) Hawaii Restricted Bottomfish Species, as specified in § 665.71, may not be sold or offered for sale during May 1, 2008, through August 31, 2008, inclusive, except as otherwise authorized by law.

(c) Fishing for, and the resultant possession or sale of, Hawaii Restricted Bottomfish Species by vessels legally registered to Mau Zone, Ho'omalu Zone, or PRIA bottomfish fishing permits and conducted in compliance with all other laws and regulations, is exempted from paragraphs (a) and (b) of this section.

11. Under subpart E, add a new § 665.74 to read as follows:

§ 665.74 Non-commercial bag limits.

No more than a total of five fish of all species combined, identified as Hawaii Restricted Bottomfish Species as specified in § 665.71, may be harvested, possessed, or landed by any individual participating in a vessel-based non-commercial fishing trip in the Main Hawaiian Islands Management Subarea.

[FR Doc. E8–1900 Filed 1–31–08; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 73, No. 22
Friday, February 1, 2008

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

January 28, 2008.

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) 720–8958.

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.

Food and Nutrition Service

Title: WIC Breastfeeding Peer Counseling Study.

OMB Control Number: 0584–NEW.

Summary of Collection: The Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) was designed to improve the health of nutritionally at-risk, low-income pregnant, breastfeeding, and postpartum women, infants, and children up to five years of age. The program provides supplemental foods that are rich in nutrients known to be lacking in the target population; health and social service referrals; and nutrition education, including information about breastfeeding. Current recommendations of the American Academy of Pediatrics, the American Dietetic Association, the World Health Organization, and the U.S. government's Healthy People 2010 goals call for increases in the proportion of U.S. mothers who breastfeed their babies. WIC encourages breastfeeding as the best source of infant nutrition, and is working to meet the 2010 goals and improve the breastfeeding rates of WIC women relative to non-WIC participants.

Need and Use of the Information: The Food and Nutrition Service (FNS) will use an on-line survey to collect data from 86 State WIC agencies receiving FNS peer counseling grants on the implementation of the *Loving Support* peer counseling program. Results of the study will be used to: (1) capture and disseminate information on implementing peer counseling programs using the Loving Support model, including lessons learned and successful approaches used by State agencies; (2) assess the additional technical and training needs of State agencies; and (3) provide information to FNS and other Stakeholders on how State agencies are using the peer counseling funding. Without this effort, FNS will not have the comprehensive, systematic description of the implementation of the *Loving Support* peer counseling program required to inform the future program decisions including expenditures of peer counseling funds.

Description of Respondents: State, Local, or Tribal Government.

Number of Respondents: 618.

Frequency Of Responses: Reporting: Other (one time).

Total Burden Hours: 461.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E8–1822 Filed 1–31–08; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Klamath National Forest, CA; Thom-Seider Vegetation Management and Fuel Reduction Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Land managers propose the Thom-Seider Vegetation Management and Fuel Reduction Project to reduce fuel hazard and restore forest health on Klamath National Forest System lands. The project area is situated on both sides of the Klamath River between Hamburg and Happy Camp, California. Thinning and understory burning (underburning) is proposed for approximately 30,000 acres of strategic areas selected for their location, topography, stand structure, density, age and condition. The project is intended to reduce the potential for high-severity wildland fires to harm people, private and public land, and older forest habitats.

DATES: Comments postmarked or received by March 7, 2008 are assured of being considered in the environmental analysis. The Draft Environmental Impact Statement is expected to be published Summer 2008 and the Final Environmental Impact Statement is scheduled for Winter 2009.

ADDRESSES: *Address Comments to:* Happy Camp and Oak Knoll Districts Ranger, Attn: Thom-Seider Project, Klamath National Forest, 63822 Highway 96, PO Box 377, Happy Camp, California 96039. You may also send electronic comments to the project e-mail box: *comments-pacificsouthwest-klamath-happy-camp@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Please contact District Ranger Donald M Hall or Interdisciplinary Team Leader Rochelle Desser if you have questions, concerns or suggestions relating to this

proposal. You may contact Don at Happy Camp Ranger District Office at 530–493–1723 or at *donaldhall@fs.fed.us*. Rochelle is available by phone at 531–596–2453 or at *rdesser@fs.fed.us*.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The Thom-Seider project area contains an overabundance of early- and mid-successional stands that provide limited habitat for species dependent on older forests. Many of these stands are not structurally diverse and are overdense. In some cases, remnant large older trees in the stands have lost vitality due to competition for light and water from the dense understory. In the event of a wildland fire, these dense early- and mid-successional forests are more susceptible to stand replacement fire because of their continuous crowns and the presence of ladder fuels.

Actions to help early to mid successional stands develop old growth characteristics and be less vulnerable to damaging wildland fire include reducing stand density and ground and ladder fuels, and prescribed fire. These actions would also help maintain the older trees currently living in the stand.

The project area is on both sides of the Klamath River and includes river communities such as Hamburg, Seiad Valley, and Happy Camp. The areas that interface between private land and National Forest System lands are a high priority for fuels reduction. Fuels reduction is also important along roads that provide evacuation routes or can be used as fuel breaks in the event of a fire.

Action is needed to reduce tree density and forest competition; reduce ladder fuels that lead to canopy fires; reduce crown fire potential, improve wildlife habitat; and improve probability that early to mid-successional stands will develop into old growth. These actions are particularly important in Late-Successional Reserves established for development of older forest habitats, and in the Wildland Urban Interface (WUI) where the National Forest abuts private property and communities.

Management Direction

The project area includes late-successional reserves, riparian reserves, a wild and scenic river, and roadless areas. Plans, policies and regulations that provide management direction for this project include (not limited to): the Klamath National Forest Land and Resource Management Plan of 1995; the Section 7(a)(1) of the Endangered Species Act; the Healthy Forest Restoration Act; the National Fire Plan; the Roadless Rule of 2001; the Clean Water Act; and the Clean Air Act.

This project is authorized under section 102 of the Healthy Forest Restoration Act of 2003 because it would provide ''enhanced protection from catastrophic wildland fire'' for the habitat of a threatened species, the northern spotted owl; and a candidate species, the Pacific fisher. Commercial thinning is an allowable exception under Section 294.13(b) of the 2001 Roadless Rule because it involves removal of timber to improve threatened species habitat, it would maintain and restore ecosystem composition and structure, and it would reduce the hazard of uncharacteristic wildland fire effects.

The project is designed to be consistent with all applicable policies and plans. The type of thinning proposed follows Late-Successional Reserve Assessment and Watershed Analysis recommendations. Riparian reserves would be treated where needed to meet Aquatic Conservation Strategy objectives.

Proposed Action

The Proposed Action includes about 22,000 acres of underburning; 2,450 acres of variable density thinning (includes commercial and non-commercial), 2,700 acres of roadside fuels treatment, and 6,150 acres of understory thinning around private properties.

Underburning refers to a range of prescribed burning activities including hand piling, burning small concentrations of debris and slash (jackpot) and low intensity burning under a forest canopy. Approximately 22,000 acres of underburning is proposed. Non-commercial thinning small trees and brush would occur within the underburns as needed to promote effective fuel consumption. Underburning reduces both natural and activity fuel loading, consumes the build up of forest debris and litter, promotes the growth of browse species, encourages grass and forbs, and thins out smaller shade tolerant trees (ladder fuels), thus reducing fire behavior and negative effects from wildland fire. In some cases, small jackpots of trees are consumed to provide a break in the canopy. Burning operations would be accomplished to follow a prescribed burn plan that meets land management objectives and public concerns. A burn and smoke management plan would be implemented to minimize the effects of smoke on adjacent communities and the public.

Variable Density Thinning includes commercial and non-commercial thinning that reduces forest competition and increases diversity in early- to mid-successional forests. It also is intended to increase the longevity of larger, older trees in the stands. Thinning is proposed for the smallest trees in the stand, around individual large trees and in unevenly spaced clumps. Snags would be retained except where there are safety hazards. Approximately 2,450 acres of variable density thinning is proposed.

Commercial thinning is proposed in stands that are accessible from the existing road system and are of a size, age, terrain and structure suitable for logging. Within commercial thinning units, trees greater than 8 inches in diameter would be cut, along with the smaller trees and brush. A total of about 1,950 acres of commercial thinning is currently proposed, including about 1,000 acres within Late-Successional Reserves and about 130 acres within the outer portions of Riparian Reserves. Commercial thinning would be accessed by a combination of the existing road network and helicopters. Approximately 2.6 miles of temporary road in 12 segments located throughout the project area are proposed to more efficiently remove thinned logs.

The land used for temporary roads would be rehabilitated after the project was completed. Logging systems include helicopter and ground based systems. Non-commercial thinning is proposed on about 500 acres, mainly within Late-Successional Reserves. These stands are high priority for thinning because they have overdense understories or excessive ladder fuels; however, the trees are smaller than commercial size (8 inches or less in diameter). These areas may be treated as funds become available.

Roadside Fuel Treatments are proposed along strategic roads that may provide anchors for fire suppression in the event of a wildland fire or access in the event of an evacuation. Approximately 2,700 acres (about 77 miles of roads) are proposed for roadside fuels treatments. Roadside treatments include thinning and pruning of small understory trees (generally < 10″ diameter at breast height, or DBH) and brush with chainsaws along forest roads. The treatment would be on both sides of the roads, generally within 250 feet above roads and 150 feet below roads. Treatment areas along the roads include plantations and natural stands of varying ages and structures. Trees less than 6 inches DBH would generally be left at a spacing of 15 to 20 feet apart, and larger diameter conifers (7″ to 12″ DBH) and most hardwoods would be

left 20 to 25 feet apart. The slash created will be hand piled and burned, converted to chips, processed with a masticator if accessible from an existing road, or removed from the site as firewood or other forest products. In areas where fuels objectives cannot be met because there is an excess amount of dead material on the ground, some of this material may also be burned or removed from the site. In addition, incidental larger hazard trees would be felled, if deemed hazards to the crews working on the project. The hazard trees would be felled and left in place, or removed to disposal sites on or adjacent to roads.

The proposed treatments will reduce ladder and ground fuels, providing for reduced fire intensity, rate of spread, and flame lengths in the event of a wildland fire. After the project is completed, the roads will be passable for emergency vehicles during a wildland fire. Treatments are also designed so that the roads could be used as effective fire lines under moderate wildland fire conditions. Fire suppression activities will be safer and more successful in areas that receive this treatment.

The project areas that are adjacent to roads are in a particularly hazardous condition because the road openings allow growing space and additional sunlight to the vegetation, and the bare mineral soil on the road banks makes an excellent bed for thick regeneration. These conditions stimulate the growth of a tree and brush thicket along roads, and larger vegetation often can maintain limbs near ground level with out being shaded out.

Understory Thinning Around Private Land Boundaries is proposed where landowners are willing to perform non-commercial fuels reduction (thinning, brushing and hand piling) on a strip of Forest land 500 feet wide adjacent to their property. Approximately 6,000 acres of private land boundary understory treatments are proposed. The proposed treatment is intended to reduce existing ladder and ground fuels to provide for low intensity fire behavior. These zones create corridors in which the fire hazard is reduced to allow firefighters relatively safe access for wildland fire suppression activities and to allow for increased options during wildland fire suppression activities to reduce fire severity.

Lead and Cooperating Agencies

The Forest Services is the lead agency. Representatives from the Fish and Wildlife Service and NOAA Fisheries are core members of the Interdisciplinary Team.

Responsible Official

The Responsible Official for this project is the Forest Supervisor for the Klamath National Forest, 1312 Fairlane Road, Yreka, California 96097.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. The public is encouraged to take part in the process and visit with Forest Service and Fish and Wildlife officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments and assistance from Federal, State, and local agencies and other individuals or organizations that may be interested in, or affected by, the proposed thinning and underburning project. Three public scoping meetings have been scheduled for February 11, 12 and 13, 2008 in Happy Camp, Seiad Valley and Hamburg respectively. Please contact District Ranger Donald Hall (see previous contact info) for details about the meeting.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 533 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement.

Comments may also address the adequacy of the draft environmental impact or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points. Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: January 24, 2008.

Patricia A. Grantham,

Acting Forest Supervisor, Klamath National Forest.

[FR Doc. E8–1726 Filed 1–31–08; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

United States Standards for Beans

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice of reopening of comment period.

SUMMARY: We published a notice in the **Federal Register** on April 17, 2007 (72 FR 19169), inviting comments regarding the revision of the U.S. Standards for Beans. The proposed revisions would provide applicants for service with an optional grade designation for bean certification; and remove the requirements that the percentage of high moisture and, for Mixed beans, the percentage of each class in the mixture, be shown on the grade line. The notice provided an opportunity for interested parties to forward written comments to the Grain Inspection, Packers and Stockyards Administration (GIPSA) until May 17, 2007. Due to the continued high level of interest in this

notice, we are reopening the comment period to provide interested parties with additional time to comment.

DATES: We will consider comments that we receive by April 1, 2008.

ADDRESSES: We invite you to submit your comments on the notice. You may submit comments by any of the following methods:

- *E-mail:* Send comments via electronic mail to *comments.gipsa@usda.gov.*
- *Mail:* Send hardcopy written comments to Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1633–S, Washington, DC 20250–3604.
- *Fax:* Send comments by facsimile transmission to: (202) 690–2173.
- *Hand Delivery or Courier:* Deliver comments to: Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1643–S, Washington, DC 20250–3604.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Instructions:* All comments should make reference to the date and page number of this issue of the **Federal Register**.
- *Read Comments:* All comments will be available for public inspection in the above office during regular business hours (7 CFR 1.27 (b)).

FOR FURTHER INFORMATION CONTACT: Beverly A. Whalen at USDA, GIPSA, FGIS, Market and Program Analysis Staff, Suite 180, STOP 1404, 6501 Beacon Drive, Kansas City, Missouri, 64133; Telephone (816) 823–4648; Fax Number (816) 823–4644; e-mail *Beverly.A.Whalen@usda.gov.*

SUPPLEMENTARY INFORMATION: GIPSA published a notice in the **Federal Register** on April 17, 2007 (72 FR 19169), inviting comments from all interested persons on the proposed revisions to the U.S. Standards for Beans. The proposed revisions would provide applicants for service with an optional grade designation for bean certification and remove the requirements that the percentage of high moisture, and, for Mixed beans, the percentage of each class in the mixture, be shown on the grade line. For ease of reference, we have included in this notice a discussion of the revisions to the U.S. Standards for Beans that are under consideration.

Optional Grade Designation and Certification Procedures

Currently, inspectors certify beans offered for inspection as a specific quality (U.S. grade), such as U.S. No. 2 Pinto Beans. Certifying a specific grade is commonly referred to as ''Option 1'' grade designation. This works well most of the time; however, there are exceptions. At times, sellers find when preparing to load beans for shipment that the supply of a particular grade of bean may be insufficient to meet the quality and quantity requirements specified in the sales contract. When this happens, the seller may find it necessary to ship beans of a better quality. However, current inspection procedures do not allow the flexibility to describe or certify superior quality beans as being of a lower quality. If the lot presented for inspection is not uniform in quality for the declared grade, the inspector certifies each portion separately according to quality. That is, if a consignment consists of both U.S. No. 1 and 2 Pinto Beans, current procedure requires that the quantity representing each of the different qualities receive separate certification. Such certification may not meet the terms of sale for the contract.

An alternative approach is termed ''Option 2'' grade designation. When a contract specifies an Option 2 grade designation, the applicant may specifically request Option 2 certification. Under Option 2 certification, there would be no limitation placed on the amount of better quality beans in the lot. When a lot meets or is of better quality than the declared grade, inspectors would include the term ''or better'' immediately following the numerical or sample grade designation.

We would like to offer the Option 2 grade designation and certification approach for beans. Under such an approach, the applicant for inspection can obtain the optional certification procedure by requesting it on the application for inspection. The applicant would file the request for the optional certification prior to the beginning of inspection so the inspector knows how to certify the lot. Beans that are a better quality than that specified by the contract would be certified as a specific grade ''or better'' (for example, U.S. No. 2, or better, Pinto Beans). We believe that Option 2 grade designation and certification will provide sellers with the flexibility to ship beans of better quality, and provide buyers with the desirable option of receiving better quality.

High Moisture Beans

The special grade designation ''High moisture'' is applicable to all classes of beans containing over 18.0 percent moisture and is required to be shown on the grade line of the certificate. We will continue to show the special grade designation ''High moisture'' on the grade line, when applicable, but propose to list the moisture percentage in the ''Results'' section of the certificate. This approach is intended to enhance the readability of the certificate.

Mixed Dry Beans

We also propose to eliminate the requirement that certain grade related information be shown on the grade line of the certificate for the class of Mixed beans. Currently, the U.S. Standards for Beans require a breakdown of the different classes, in order of predominance, be shown on the grade line of the certificate, in addition to the regular grade designation information, when the beans are classed as Mixed beans. Instead of showing this information on the grade line, we propose to enter such information in the ''Results'' section of the certificate. This approach will not change the grade of the product and will enhance the readability of the certificate.

Comments

The comment period of 30 days from the date of publication (72 FR 19169) closed on May 17, 2007. Due to continued high level of interest in the April 17, 2007 notice, GIPSA is reopening the comment period to provide interested parties additional time to comment. As a result, the comment period is reopened for a 60 day period. We welcome both comments from interested persons who did not comment during the initial 30 day period, as well as those interested persons who have already commented.

Authority: 7 U.S.C. 1621–1627.

David R. Shipman,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. E8–1819 Filed 1–31–08; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

United States Standards for Whole Dry Peas, Split Peas, and Lentils

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice of reopening of comment period.

SUMMARY: We published a notice in the **Federal Register** on April 17, 2007 (72 FR 19169), inviting comments regarding the revision of the U.S. Standards for Whole Dry Peas, Split Peas, and Lentils.

The proposed revisions would provide applicants for service with an optional grade designation for pea and lentil certification and remove the requirement that for Mixed Dry Peas, the percentage of each class in the mixture be shown on the grade line. The notice provided an opportunity for interested parties to forward written comments to the Grain Inspection, Packers and Stockyards Administration (GIPSA) until May 17, 2007. Due to the continued high level of interest in this notice, we are reopening the comment period to provide interested parties with additional time in which to comment.

DATES: We will consider comments that we receive by April 1, 2008.

ADDRESSES: We invite you to submit your comments on the notice. You may submit comments by any of the following methods:

- *E-mail:* Send comments via electronic mail to *comments.gipsa@usda.gov.*
- *Mail:* Send hardcopy written comments to Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1633–S, Washington, DC 20250–3604.
- *Fax:* Send comments by facsimile transmission to: (202) 690–2173.
- *Hand Delivery or Courier:* Deliver comments to: Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1643–S, Washington, DC 20250–3604
- *Federal eRulemaking Portal:* Go to *http://www.regulation.gov.* Follow the online instructions for submitting comments.
- *Instructions:* All comments should make reference to the date and page number of this issue of the **Federal Register**.
- *Read Comments:* All comments will be available for public inspection in the above office during regular business hours (7 CFR 1.27 (b)).

FOR FURTHER INFORMATION CONTACT: Beverly A. Whalen at USDA, GIPSA, FGIS, Market and Program Analysis Staff, Suite 180, STOP 1404, 6501 Beacon Drive, Kansas City, Missouri, 64133; Telephone (816) 823–4648; Fax Number (816) 823–4644; e-mail *Beverly.A.Whalen@usda.gov.*

SUPPLEMENTARY INFORMATION: GIPSA published a notice in the **Federal Register** on April 17, 2007 (72 FR 19169), inviting comments from all interested persons on the proposed revisions to the U.S. Standards for Whole Dry Peas, Split Peas, and Lentils. The proposed revisions would provide applicants for service with an optional grade designation for pea and lentil certification and remove the requirement for Mixed Dry Peas, the percentage of each class in the mixture be shown on the grade line. For ease of reference, we have included in this notice the discussion of the revisions to the U.S. Standards for Whole Dry Peas, Split Peas, and Lentils that are under consideration.

Optional Grade Designation and Certification Procedures

Currently, inspectors certify peas and lentils offered for inspection as a specific quality (U.S. grade), such as U.S. No. 2 Smooth Green Dry Peas. Certifying a specific grade is commonly referred to as ''Option 1'' grade designation. This works well most of the time, however, there are exceptions. At times, sellers find when preparing to load peas or lentils for shipment that the supply of a particular grade of pea or lentil may be insufficient to meet the quality and quantity requirements specified in the sales contract. When this happens, the seller may find it necessary to ship peas or lentils of a better quality. However, current inspection procedures do not allow the flexibility to describe or certify superior quality peas or lentils as being of a lower quality. If the lot presented for inspection is not uniform in quality for the declared grade, the inspector certifies each portion separately according to quality. That is, if a consignment consists of both U.S. No. 1 and 2 Smooth Green Dry Peas, current procedure requires that the quantity representing each of the different qualities receive separate certification. Such certification may not meet the terms of sale for the contract.

An alternative approach is termed ''Option 2'' grade designation. When a contract specifies an Option 2 grade designation, the applicant may specifically request Option 2 certification. Under Option 2 certification, there would be no limitation placed on the amount of better quality peas and lentils in the lot. When a lot meets or is of better quality than the declared grade, inspectors would include the term ''or better'' immediately following the numerical or sample grade designation.

We would like to offer the Option 2 grade designation and certification approach for peas and lentils. Under such an approach, the applicant for inspection can obtain the optional certification procedure by requesting it on the application for inspection. The applicant would file the request for the optional certification prior to the beginning of inspection so the inspector knows how to certify the lot. Peas or lentils that are a better quality than that specified by the contract would be certified as a specific grade ''or better;'' (for example, U.S. No. 2, or better, Smooth Dry Peas). We believe that Option 2 grade designation and certification will provide sellers with the flexibility to ship peas and lentils of better quality, and provide buyers with the desirable option of receiving better quality.

Mixed Whole Dry Peas

We also propose to eliminate the requirement that certain grade related information be shown on the grade line of the certificate for the class of Mixed Whole Dry Peas. Currently, the U.S. standards for Whole Dry Peas require a breakdown of the different classes, in order of predominance, be shown on the grade line of the certificate, in addition to the regular grade designation information, when the peas are classed as Mixed peas. Instead of showing this information on the grade line, we propose to enter such information in the ''Results'' section of the certificate. This approach will not change the grade of the product and will enhance the readability of the certificate.

Comments

The comment period of 30 days from the date of publication (72 FR 19169) closed on May 17, 2007. Due to continued high level of interest in the April 17, 2007, notice, GIPSA is reopening the comment period to provide interested parties additional time to comment. As a result, the comment period is reopened for a 60 day period. We welcome both comments from interested persons who did not comment during the initial 30 day period, as well as those interested persons who have already commented.

Authority: 7 U.S.C. 1621–1627.

David R. Shipman,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. E8–1820 Filed 1–31–08; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service's (RUS) an agency delivering the U.S. Department

of Agriculture (USDA) Rural Development Utilities Programs, invites comments on this information collection for which approval from the Office of Management and Budget (OMB) will be requested.

DATES: Comments on this notice must be received by April 1, 2008.

FOR FURTHER INFORMATION CONTACT: Michele L. Brooks, Acting Director, Program Development & Regulatory Analysis, Rural Utilities Service, USDA, 1400 Independence Ave., SW., STOP 1522, Room 5168—South Building, Washington, DC 20250–1522. Telephone: (202) 690–1078. Fax: (202) 720–8435.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implanting provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for extension.

Comments are invited on (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 assumption 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 on other forms of information technology. Comments may be sent to: Joyce McNeil, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Room 5166-South, STOP 1522, Washington, DC 20250–1522. Fax: (202) 720–8435. E-mail: *Joyce.mcneil@wdc.usda.gov.*

Title: 7 CFR 1726, Electric System Construction Policies and Procedures.

OMB Control Number: 0572–0107.

Type of Request: Extension of a previously approved collection.

Abstract: In order to facilitate the programmatic interest of the Rural Electrification Act of 1936, 7 U.S.C. 901 *et seq.* (RE Act), and, in order to assure that loans made or guaranteed by RUS are adequately secured, RUS, as a secured lender, has established certain standards and specifications for materials, equipment, and construction of electric systems. The use of standard forms, construction contracts, and procurement procedures helps assure RUS that appropriate standards and specification are maintained; RUS' loan security is not adversely affected; and the loan and loan guarantee funds are used effectively and for the intended purposes.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.5 minutes per response.

Respondents: Businesses or other for profits; Not-for-profit institutions.

Estimated Number of Respondents: 697.

Estimated Number of Responses per Respondent: 5.

Estimated Total Annual Burden on Respondents: 71 hours.

Copies of this information collection, and related form and instructions, can be obtained from Joyce McNeil, Program Development and Regulatory Analysis, at (202) 720–0812.

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: January 24, 2008.

James M. Andrew,

Administrator, Rural Utilities Service.

[FR Doc. E8–1892 Filed 1–31–08; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Economic Analysis (BEA).

Title: Expenditures Incurred by Recipients of Biomedical Research Awards from the National Institutes of Health (NIH).

OMB Control Number: None.

Form Number: None.

Type of Review: Regular submission.

Burden Hours: 1,650.

Number of Respondents: 150.

Average Hours Per Response: 11.

Needs and Uses: The survey to obtain the distribution of expenditures incurred by recipients of biomedical research awards from the National Institutes of Health Research (NIH) will provide information on how the NIH award amounts are expended across several major categories. This information, along with wage and price data from other published sources, will be used to generate the Biomedical Research and Developmental Price Index (BRDPI). The Bureau of Economic Analysis (BEA) of the Department of Commerce develops this index for the National Institutes of Health (NIH) under reimbursable contract. The BRDPI is an index of prices paid for the labor, supplies, equipment, and other inputs required to perform the biomedical research the NIH supports in its intramural laboratories and through its awards to extramural organizations. The BRDPI is a vital tool for planning the NIH research budget and analyzing future NIH programs. A survey of award recipient entities is currently the only means for updating the expenditure categories that are used to prepare the BRDPI.

Affected Public: Business or other for-profit organizations, and not-for-profit institutions.

Frequency: Annually.

Respondent's Obligations: Voluntary.

Legal Authority: 45 CFR Subpart C, Post-Award Requirements, Sections 74.21 and 74.53; 42 U.S.C. 282; Economy Act (31 U.S.C. 1535 and 1536); 15 U.S.C. 1525; and 15 U.S.C. 1527a.

OMB Desk Officer: Paul Bugg, (202) 395–3093.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Office of the Chief Information Officer, Department of Commerce, Room 6625, 14th Street and Constitution Avenue, NW., Washington DC 20230, or via the Internet at *dHynek@doc.gov*.

Send comments on the proposed information collection within 30 days of publication of this notice to Paul Bugg, OMB Desk Officer, via the Internet at *pbugg@omb.eop.gov* or by fax (202) 395–7245.

Dated: January 29, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–1831 Filed 1–31–08; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Economic Development Administration

[Docket No.: 080125084–8086–01]

Solicitation of Applications for the University Center Economic Development Program

AGENCY: Economic Development Administration (EDA), Department of Commerce.

ACTION: Notice and request for applications.

SUMMARY: EDA is soliciting competitive applications from accredited institutions of higher education and from consortia of accredited institutions of higher education for FY 2008 University Center Economic Development Program funding in the geographic areas served by its Chicago and Philadelphia regional offices. EDA's mission is to lead the federal economic development agenda by promoting innovation and competitiveness, preparing American regions for growth and success in the worldwide economy. Institutions of higher education have many assets and in partnership with EDA, they are able to establish and operate University Centers. These EDA-sponsored University Centers conduct applied research, provide technical assistance to public and private sector organizations, and conduct other activities with the goal of enhancing regional economic development by promoting a favorable business environment to attract private capital investment and higher-skill, higher-wage jobs.

DATES: The closing date and time for receipt of applications for funding under the FY 2008 University Center Economic Development Program competition is April 15, 2008 at 4 p.m. local time. The Chicago regional office will hold a pre-application teleconference on March 5, 2008 at 10 a.m. (CST). The Philadelphia regional office will hold its pre-application teleconference call on March 12, 2008 at 2 p.m. (EST). For further information and instructions regarding these teleconferences, please see the information provided below under ''Teleconferences.''

Application Submission Requirements: Applicants are advised to carefully read the instructions contained in Section IV of the complete Federal Funding Opportunity (FFO) announcement for this request for applications. For a copy of the FFO announcement, please see the Web sites listed below under ''Electronic Access.''

Applications may be submitted in two formats: (i) In paper format at the addresses provided below; or (ii) electronically in accordance with the procedures provided on *www.grants.gov.* EDA will not accept facsimile transmissions of applications. The content of the application is the same for paper submissions as it is for electronic submissions. A complete application must contain all the items listed in the *Checklist of Application Materials* attached as an Exhibit to the complete FFO announcement.

You may obtain paper application packages by contacting the designated point of contact listed below under ''For Further Information'' for the EDA regional office servicing your geographic area. Applicants applying electronically through *www.grants.gov* may access the application package by following the instructions provided on *www.grants.gov.* Additionally, the following application forms may be accessed and downloaded as follows: (i) Form ED–900A, *Application for Investment Assistance*, at *http://www.eda.gov/InvestmentsGrants/Application.xml*; (ii) Standard Forms (SF) at *www.grants.gov* or at *http://www.eda.gov/InvestmentsGrants/Application.xml*; and (iii) Department of Commerce (CD) forms at *http://www.doc.gov/forms*.

Paper Submissions: Applicants in Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin, or Muscatine or Scott counties, Iowa, should submit paper submissions (via postal mail, overnight delivery or hand-delivery) to: FY 2008 University Center Program Competition, Economic Development Administration, Chicago Regional Office, 111 North Canal Street, Suite 855, Chicago, Illinois 60606–7208.

Applicants in Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virginia, Virgin Islands or West Virginia should submit paper submissions (via postal mail, overnight delivery or hand-delivery) to: FY 2008 University Center Program Competition, Economic Development Administration, Philadelphia Regional Office, Curtis Center, Suite 140 South, 601 Walnut Street, Philadelphia, Pennsylvania 19106–3323.

Department of Commerce mail security measures may delay receipt of United States Postal Service mail for up to two weeks. Therefore, applicants who submit paper submissions are advised to use a guaranteed overnight delivery service.

Electronic Submissions: Applicants may submit applications electronically in accordance with the instructions provided at www.grants.gov. EDA strongly encourages that applicants not wait until the application closing date to begin the application process through www.grants.gov. The preferred file format for electronic attachments (e.g., the Project Narrative and exhibits to Form ED–900A) is portable document format (PDF); however, EDA will accept electronic files in Microsoft Word, WordPerfect, Lotus or Excel formats.

Applicants should access the following link for assistance in navigating www.grants.gov and for a list of useful resources: *http://www.grants.gov/applicants/applicant_help.jsp*. If you do not find an answer to your question under *Frequently Asked Questions*, try consulting the *Applicant's User Guide*. If you still cannot find an answer to your question, contact www.grants.gov via e-mail at *support@grants.gov* or telephone at 1–800–518–4726. The hours of operation for www.grants.gov are Monday–Friday, 7 a.m. to 9 p.m. (EST) (except for federal holidays).

FOR FURTHER INFORMATION CONTACT: For additional information or for a paper copy of the application package, the designated contact person in the Chicago regional office is Jack Price. Mr. Price may be reached at *jprice@eda.doc.gov* or at 312–353–8143, ext. 159. The designated contact person in the Philadelphia regional office is William Good. Mr. Good may be reached at *wgood@eda.doc.gov* or at 215–597–0405. EDA's Internet Web site at *http://www.eda.gov* also has additional information on EDA and its programs, including the University Center Economic Development Program.

SUPPLEMENTARY INFORMATION:

Program Information: EDA began administering the University Center Economic Development Program as a competitive multi-year program as part of its FY 2004 solicitation for applications. Under this multi-year program designation, EDA held University Center Economic Development Program competitions annually in two of its six regional offices in FY 2004 through FY 2006, and will hold similar competitions in FY 2008 and FY 2009. The Austin and Denver regional offices solicited applications for the FY 2004 University Center competition, the Philadelphia and Chicago regional offices solicited applications for the FY 2005 University Center competition, and the Atlanta and Seattle regional offices solicited

applications for the FY 2006 University Center competition.

Electronic Access: The complete FFO announcement for the FY 2008 University Center Economic Development Program competition is available at www.grants.gov and at *http://www.eda.gov/InvestmentsGrants/FFON.xml*.

Funding Availability: Funding appropriated under the FY 2008 Consolidated Appropriations Act (Pub. L. No. 110–161, 121 Stat. 1844 (2007)) is available for the economic development assistance programs authorized by PWEDA and for the Trade Adjustment Assistance for Firms Program authorized under the Trade Act of 1974, as amended (19 U.S.C. 2341–2391). Funds in the amount of $249,100,000 have been appropriated for FY 2008 and shall remain available until expended.

In all events, the funding periods and funding amounts referenced in this notice are subject to the availability of FY 2008 funds at the time of award, as well as to Department of Commerce's and EDA's priorities at the time of award. The Department of Commerce and EDA will not be held responsible for application preparation costs if the University Center Economic Development Program fails to receive funding or is cancelled because of agency priorities. Publication of this notice does not obligate the Department of Commerce or EDA to award any specific grant or cooperative agreement or to obligate all or part of available funds.

EDA expects to allocate approximately $7,202,620 to the University Center Economic Development Program and the remaining appropriated funds to EDA's Local and National Technical Assistance Programs. The amount of University Center funding available for competition in FY 2008 is expected to be approximately $1,118,370 for the Chicago regional office and approximately $1,396,760 for the Philadelphia regional office. Annual awards for the University Centers selected under the FY 2005 competition were in the $120,000 to $175,000 range for the Chicago regional office and in the $80,000 to $150,000 range for the Philadelphia regional office. These regional offices may, however, choose to fund awards under this competition outside of these ranges. The remaining FY 2008 University Center Economic Development Program funds will be used to continue support for current University Centers selected during the FY 2006 and FY 2007 competitions in EDA's other four regional offices. Subject to the availability of funding at the time of award, the funds allocated to the University Center Economic Development Program are anticipated to be available until expended.

Statutory Authority: The authority for the University Center Program is section 207 (42 U.S.C. 3147) of the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. 3121 *et seq.*) (PWEDA). The specific authority for the University Center Economic Development Program is section 207 of PWEDA (42 U.S.C. 3147), which authorizes EDA to make grants for the establishment of University Centers. EDA's regulations at 13 CFR parts 300–302 and subpart B of 13 CFR part 306 set forth the general and specific regulatory requirements applicable to the University Center Economic Development Program. EDA's regulations are codified at 13 CFR chapter III. The regulations and PWEDA are accessible on EDA's Internet Web site at *http://www.eda.gov/InvestmentsGrants/Lawsreg.xml*.

Catalog of Federal Domestic Assistance (CFDA) Number: 11.303, Economic Development—Technical Assistance.

Applicant Eligibility: An accredited institution of higher education or a consortium of accredited institutions of higher education is eligible to apply for and to receive funding under the University Center Economic Development Program. *See* section 3(12) of PWEDA (42 U.S.C. 3122(12)) and 13 CFR 300.3. A University-affiliated research foundation also is eligible to apply for and to receive funding under the University Center Economic Development Program, provided it demonstrates (e.g., a letter or other documentation from a University President or Chancellor) that it maintains the full and integral support of the University with respect to its economic development activities. For applicants applying as a consortium, a lead agent should be identified who would have lead responsibility to EDA and to the other members of the consortium for implementing a University Center Economic Development Program award. For FY 2008, the University Center Economic Development Program competition is open to eligible applicants in the geographic areas served by EDA's Chicago and Philadelphia regional offices. The Chicago regional office serves Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin and Muscatine and Scott counties, Iowa. The Philadelphia regional office serves Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virginia, Virgin Islands and West Virginia.

Project Period: The Chicago and Philadelphia regional offices will provide a three-year project period for each University Center selected for funding under the FY 2008 University Center Economic Development Program competition, with the initial award being made for the first year of the project period. The selected University Centers will not have to compete for the second and third years of funding. Funding beyond the initial year is dependent upon the availability of funds and satisfactory performance, as determined by EDA and expressed in written notice. Matching share commitment percentages must remain the same for all three years of funding.

Current University Center operators in the service areas of EDA's Atlanta, Austin, Denver and Seattle regional offices will not have to compete for continuation funding in FY 2008, subject to the availability of funds and satisfactory continuing performance, as determined by EDA and expressed in a written notice. The servicing EDA regional office will contact current University Center operators regarding the procedures for applying for FY 2008 continuation funding.

Cost Sharing Requirement: Generally, the amount of the EDA grant may not exceed fifty (50) percent of the total cost of the project. Projects may receive an additional amount that shall not exceed thirty (30) percent, as determined by EDA, based on the relative needs of the region in which the project will be located. *See* section 204(a) of PWEDA (42 U.S.C. 3144) and 13 CFR 301.4(b)(1). The Assistant Secretary of Commerce for Economic Development has the discretion to establish a maximum EDA investment rate of up to one hundred (100) percent where the project (i) merits and is not otherwise feasible without an increase to the EDA investment rate; or (ii) will be of no or only incidental benefit to the recipient. *See* section 204(c)(3) of PWEDA (42 U.S.C. 3144) and 13 CFR 301.4(b)(4).

In the application review process, EDA will consider the nature of the contribution (cash or in-kind) and the amount of the matching share funds. While cash contributions are preferred, in-kind contributions, fairly evaluated by EDA, may provide the non-federal share of the total project cost. *See* section 204(b) of PWEDA (42 U.S.C. 3144) and Section I.B. of the FFO announcement for this request for applications. In-kind contributions, which may include assumptions of debt

and contributions of space, equipment, and services, are eligible to be included as part of the non-federal share of eligible project costs if they meet applicable federal cost principles and uniform administrative requirements. Funds from other federal financial assistance awards are considered matching share funds only if authorized by statute, which may be determined by EDA's reasonable interpretation of the statute. *See* 13 CFR 300.3. The applicant must show that the matching share is committed to the project for the entire project period, will be available as needed and is not conditioned or encumbered in any way that precludes its use consistent with the requirements of EDA investment assistance. *See* 13 CFR 301.5.

Intergovernmental Review: Applications for funding under the University Center Economic Development Program are subject to the State review requirements imposed by Executive Order 12372, ''*Intergovernmental Review of Federal Programs.*''

Evaluation and Selection Procedures: Prior to the review paneling process, EDA's Chicago and Philadelphia regional offices will undertake a technical review of each application to ensure that all required forms, signatures and documentation are present and that the application is in compliance with the requirements of this competitive solicitation. Applications failing to meet the technical requirements of this competitive solicitation will not be referred to the review panel.

Applications meeting all technical requirements will undergo a merit review by EDA's Chicago and Philadelphia regional offices. The review panel will consist of federal employees, at least three (3) of whom will be members of EDA staff from the Chicago and Philadelphia regional offices, who will evaluate and competitively rate and rank all technically-sufficient applications using the criteria provided under ''Evaluation Criteria'' below. The Regional Director of each regional office is the Selecting Official for the applications received from applicants located within that regional office's geographic service area. The review panel will submit to the Selecting Official a list of applicants recommended for funding.

Evaluation Criteria: The evaluation of applications will be accomplished through a review using the following criteria, listed in descending order of importance: (i) Ability to satisfy one or more of the University Center-specific investment policy guidelines; (ii) applicant's ability to successfully implement the project; (iii) feasibility of the project budget; and (iv) cost of the project to the Federal government. Each criterion is described below.

Ability to Satisfy One or More of the University Center-specific Investment Policy Guidelines. The following University Center-specific investment policy guidelines have been adapted from (i) EDA's general investment policy guidelines set forth in 13 CFR 301.8 and (ii) the specific award requirements for University Center projects listed in 13 CFR 306.5 (each sub-criterion listed below will be given equivalent weight). You must provide responses to these University Center-specific investment policy guidelines as part of the Project Narrative discussed in Section IV.B.1. of the FFO announcement.

1. *Be market-based and results driven.* An investment in an EDA University Center will capitalize on the university's competitive strengths and will bolster regional economic competitiveness, resulting in tangible, quantifiable improvements in regional economic health, such as increased numbers of higher-skill, higher-wage jobs, increased tax revenue or increased private sector investment.

2. *Have strong organizational leadership.* An investment will have strong leadership, relevant project management experience, and a significant commitment of human resources talent to ensure a high-performing University Center. Specifically for University Center investments, this includes: (a) The extent to which the proposed University Center will maximize coordination with other relevant organizations and avoid duplication of services offered by other organizations; (b) the extent to which the University Center will access, take advantage of, and be supported by the other resources present at the sponsoring institution, especially the institution's economic development activities; and (c) the degree of evidence demonstrating the support and commitment (both financial and non-financial) of the highest management levels of the proposed University Center's sponsoring institution.

3. *Advance productivity, innovation and entrepreneurship.* An investment in a proposed University Center will embrace the principles of entrepreneurship; enhance regional industry clusters, and leverage and link technology innovators (university research) with the private sector to create the conditions for greater productivity, innovation and higher-skill, higher-wage job creation.

4. *Look beyond the immediate economic horizon, anticipate economic changes, and diversify the local and regional economy.* A University Center's activities will be part of an overarching, long-term comprehensive economic development strategy that enhances a region's success in achieving a rising standard of living.

5. *Demonstrate a high degree of local commitment by exhibiting:*

- High levels of local government or non-profit matching funds and private sector leverage;
- Clear and unified leadership and support by local elected officials; and
- Strong cooperation between the business sector, relevant regional partners and local, State and Federal governments.

Ability to Successfully Implement the Project: The review panel will evaluate the applicant's ability to successfully implement the project. This evaluation will include the extent to which the applicant (including its sponsoring institution) has successfully implemented past technical assistance projects, especially those involving economic development. The review panel also will evaluate the expertise of project staff, as well as the academic programs and other resources available within the sponsoring institution. *See* 13 CFR 306.5.

Feasibility of Project Budget: The review panel will evaluate the feasibility of the project budget, including but not limited to the reasonableness and the allowability of project costs.

Cost of the Project to the Federal Government: The review panel will evaluate the cost of the project to the Federal government, taking into account the technical assistance services to be performed by the University Center and how those services are anticipated to spur regional economic development. As provided under ''Cost Sharing Requirement'' in this request for applications and in Section I.B. of the FFO announcement, EDA will give a preference to those applications that include a cash contribution for the matching share requirement.

Selection Factors: EDA expects to fund the highest ranking applications submitted under this competition solicitation. The Selecting Official will normally follow the recommendations of the review panel; however, the Selecting Official may decide not to make a selection, or he may select an application out of rank order for several reasons, including: (1) A determination that the application better meets the overall objectives of sections 2 and 207 of PWEDA (42 U.S.C. 3121 and 3147);

(2) the availability of program funding; (3) the geographic balance in distribution of program funds; (4) program priorities as set forth in the FFO announcement; or (5) the applicant's performance under previous federal financial assistance awards.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements: The administrative and national policy requirements for all Department of Commerce awards, contained in the *Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements*, published in the **Federal Register** on December 30, 2004 (69 FR 78389), are applicable to this competitive solicitation.

Teleconferences: The Chicago regional office will hold a pre-application teleconference on March 5, 2008 at 10 a.m. (CST). The Philadelphia regional office will hold its pre-application teleconference call on March 12, 2008 at 2 p.m. (EST). These teleconferences will provide general program information and information regarding the preparation of applications for funding under this competitive solicitation. To ensure the integrity of this competition, EDA will not provide substantive information regarding the competition to prospective applicants outside of these scheduled teleconferences.

To ensure that enough incoming lines are available for each caller, the Chicago regional office requires interested parties planning to participate on the teleconference to register no later than 5 p.m. (CST) on February 27, 2008; the Philadelphia regional office requires interested parties planning to participate on the teleconference to register no later than 4 p.m. (EST) on March 7, 2008. To register, please send an email with ''Teleconference Registration'' in the subject line to the designated contact person in the Chicago or Philadelphia regional office, as provided under **FOR FURTHER INFORMATION CONTACT** in this request for applications. The telephone number and pass code for each teleconference will be provided upon registration.

Please be advised that the pre-application teleconferences may be audio-taped and the actual recordings or a transcript of the actual recording may be made available online for the benefit of prospective applicants unable to participate. Prospective applicants who choose to participate on the teleconferences are deemed to consent to the taping.

Paperwork Reduction Act: This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Form ED–900A (*Application for Investment Assistance*) has been approved by the Office of Management and Budget (OMB) under the control number 0610–0094. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Executive Order 12866: This notice has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism): It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/ Regulatory Flexibility Act: Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for rules concerning grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: January 28, 2008.

Sandy K. Baruah,

Assistant Secretary of Commerce for Economic Development.

[FR Doc. E8–1836 Filed 1–31–08; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of upcoming Sunset Reviews.

Background

Every five years, pursuant to section 751(c) of the Tariff Act of 1930, as amended, the Department of Commerce (''the Department'') and the International Trade Commission automatically initiate and conduct a review to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for March 2008

The following Sunset Review is scheduled for initiation in March 2008 and will appear in that month's Notice of Initiation of Five-Year Sunset Reviews.

Antidumping Duty Proceedings

Non-Malleable Cast Iron Pipe Fittings from the PRC (A–570–877)

Department Contact

Juanita Chen, (202) 482–1904

Countervailing Duty Proceedings

No Sunset Review of countervailing duty proceedings are scheduled for initiation in March 2008

Suspended Investigations

No Sunset Review of suspended investigations are scheduled for initiation in March 2008

The Department's procedures for the conduct of Sunset Reviews are set forth in 19 CFR 351.218. Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3—Policies Regarding the Conduct of Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) . The Notice of Initiation of Five-Year (''Sunset'') Reviews provides further information regarding what is required of all parties to participate in Sunset Reviews.

Pursuant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 15 days of the publication of the Notice of Initition.

Please note that if the Department receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue. Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation.

This notice is not required by statute but is published as a service to the international trading community.

Dated: January 22, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–1875 Filed 1–31–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–801]

Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Partial Rescission and Preliminary Results of the First New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''Department'') is conducting new shipper reviews (''NSRs'') of the antidumping duty order on certain frozen fish fillets from the Socialist Republic of Vietnam (''Vietnam'') that cover the period of review (''POR'') of August 1, 2006, through January 31, 2007.[1] *See Notice of Antidumping Duty Order: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam,* 68 FR 47909 (August 12, 2003) *(''Order'').* On March 22, 2007, the Department initiated the semi-annual new shipper reviews for Vinh Quang Fisheries Corporation (''Vinh Quang''), Ngoc Thai Company (''Ngoc Thai''), and Anvifish Co., Ltd. (''Anvifish''). *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Initiation of Antidumping Duty New Shipper Reviews,* 72 FR 15653 (April 2, 2007).

We are preliminarily rescinding the new shipper reviews of Vinh Quang and Ngoc Thai because at the time of their requests for a new shipper review, the deadline for such requests had passed, pursuant to section 351.214(c) of the Department's regulations. We preliminarily determine that Anvifish has made sales in the United States at less than normal value (''NV''). If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on entries of subject merchandise during the POR for which the importer-specific assessment rates are above *de minimis.*

DATES: *Effective Date:* February 1, 2008.

FOR FURTHER INFORMATION CONTACT: Julia Hancock and Nicole Bankhead, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–1394 and (202) 482–9068, respectively.

SUPPLEMENTARY INFORMATION:

Case History

General

On January 31, February 21, and February 28, 2007, the Department received requests for new shipper reviews from Vinh Quang, Ngoc Thai, and Anvifish, respectively. On April 5, 2007, after initiating the reviews, the Department issued antidumping duty questionnaires to the three companies participating in the new shipper reviews. The Department subsequently issued supplemental questionnaires to all companies under review between June 2007 and December 2007.

Extension of Preliminary Results

On September 12, 2007, the Department extended the preliminary results of these new shipper reviews to December 21, 2007. *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Time Limits for the Preliminary Results of the 2006–2007 Semi-Annual New Shipper Reviews,* 72 FR 52048 (September 12, 2007). On December 21, 2007, the Department extended the preliminary results of these new shipper reviews a second time to January 22, 2008. *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Time Limits for the Preliminary Results of the 2006–2007 Semi-Annual New Shipper Reviews,* 72 FR 72668 (December 21, 2007).

Surrogate Country and Surrogate Values

On June 22, 2007, the Department sent interested parties a letter requesting comments on the surrogate country and information pertaining to valuing factors of production.

On August 7, 2007, Ngoc Thai requested that the Department extend the deadline to submit information pertaining to valuing factors of production. On August 9, 2007, the Department extended the deadline to submit information pertaining to valuing factors of production by three weeks to August 31, 2007.

On August 31, 2007, Catfish Farmers of America and individual U.S. catfish processors (collectively, ''Petitioners'') submitted comments on the surrogate country and information pertaining to valuing factors of production. No other party has submitted surrogate values or surrogate country comments on the record of this proceeding.

Scope of the Order

The product covered by this *Order* is frozen fish fillets, including regular, shank, and strip fillets and portions thereof, whether or not breaded or marinated, of the species *Pangasius Bocourti, Pangasius Hypophthalmus* (also known as *Pangasius Pangasius*), and *Pangasius Micronemus.* Frozen fish fillets are lengthwise cuts of whole fish. The fillet products covered by the scope include boneless fillets with the belly flap intact (''regular'' fillets), boneless fillets with the belly flap removed (''shank'' fillets), boneless shank fillets cut into strips (''fillet strips/finger''), which include fillets cut into strips, chunks, blocks, skewers, or any other shape. Specifically excluded from the scope are frozen whole fish (whether or not dressed), frozen steaks, and frozen belly-flap nuggets. Frozen whole dressed fish are deheaded, skinned, and eviscerated. Steaks are bone-in, cross-section cuts of dressed fish. Nuggets are the belly-flaps.

The subject merchandise will be hereinafter referred to as frozen ''basa'' and ''tra'' fillets, which are the Vietnamese common names for these species of fish. These products are classifiable under tariff article codes 1604.19.4000,[2] 1604.19.5000,[3] 0305.59.4000,[4] 0304.29.6033[5] (Frozen Fish Fillets of the species *Pangasius* including basa and tra) of the Harmonized Tariff Schedule of the United States (''HTSUS'').[6] This *Order*

[1] On November 6, 2007, the Department sent a letter informing parties that the POR was extended until February 26, 2007. Upon further review of the record, the Department determines that an extension of the POR is unnecessary.

[2] *See Memorandum to the File, from Cindy Robinson, Senior Case Analyst, Office 9, Import Administration, Subject: Frozen Fish Fillets: Third Addition of Harmonized Tariff Number,* (March 1, 2007). This HTS went into effect on March 1, 2007.

[3] *See Memorandum to the File, from Cindy Robinson, Senior Case Analyst, Office 9, Import Administration, Subject: Frozen Fish Fillets: Third Addition of Harmonized Tariff Number,* (March 1, 2007). This HTS went into effect on March 1, 2007.

[4] *See Memorandum to the File, from Cindy Robinson, Senior Case Analyst, Office 9, Import Administration, Subject: Frozen Fish Fillets: Second Addition of Harmonized Tariff Number,* (February 2, 2007). This HTS went into effect on February 1, 2007.

[5] *See Memorandum to the File, from Cindy Robinson, Senior Case Analyst, Office 9, Import Administration, Subject: Frozen Fish Fillets: Addition of Harmonized Tariff Number,* (January 30, 2007). This HTS went into effect on February 1, 2007.

[6] Until July 1, 2004, these products were classifiable under tariff article codes 0304.20.60.30 (Frozen Catfish Fillets), 0304.20.60.96 (Frozen Fish Fillets, NESOI), 0304.20.60.43 (Frozen Freshwater Fish Fillets) and 0304.20.60.57 (Frozen Sole Fillets) of the HTSUS. Until February 1, 2007, these

Continued

covers all frozen fish fillets meeting the above specification, regardless of tariff classification. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the *Order* is dispositive.

Verification

Pursuant to 19 CFR 351.307(b)(iv), we conducted verification of the sales and factors of production (''FOP'') for Anvifish.[7]

Affiliation

Section 771(33) of the Tariff Act of 1930, as amended, (''the Act''), provides that:

The following persons shall be considered to be ''affiliated'' or ''affiliated persons'':

(A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

(B) Any officer or director of an organization and such organization.

(C) Partners.

(D) Employer and employee.

(E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.

(F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

(G) Any person who controls any other person and such other person.

Additionally, section 771(33) of the Act stipulates that: ''For purposes of this paragraph, a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.''

Vinh Quang

Based on the record evidence in these new shipper reviews, we preliminarily find that Vinh Quang is affiliated with New Century Trading Company (''New Century''), pursuant to section 771(33) of the Act. For a detailed discussion of our analysis, please *see* Memorandum to James C. Doyle, Director, Office 9, through Alex Villanueva, Program Manager, Office 9, from Julia Hancock, Senior Case Analyst, Subject: New Shipper Review of the Antidumping Duty Order on Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Affiliation and Collapsing, (January 22, 2008) (''Vinh Quang Affiliation Memo''). In addition, based on the evidence presented in Vinh Quang's questionnaire responses, we preliminarily find that Vinh Quang and New Century should be treated as a single entity for purposes of this new shipper review. *See* 19 CFR 351.401(f)(1); *see also* Vinh Quang Affiliation Memo for a discussion of the proprietary aspects of this relationship.

Ngoc Thai

Based on the record evidence in these new shipper reviews, we preliminarily find that Ngoc Thai is affiliated with Thai Tan Seafood Company (''Thai Tan''), Ngoc Thu Company Ltd. (''Ngoc Thu''), and Kim Anh Company (''Kim Anh''), pursuant to section 771(33) of the Act. For a detailed discussion of our analysis, please *see* Memorandum to James C. Doyle, Director, Office 9, through Alex Villanueva, Program Manager, Office 9, from Michael Holton, Senior Case Analyst, Subject: New Shipper Review of the Antidumping Duty Order on Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Affiliation and Collapsing of Ngoc Thai Company Ltd., (January 22, 2008) (''Ngoc Thai Affiliation Memo''). In addition, based on the evidence presented in Ngoc Thai's questionnaire responses, we preliminarily find that Ngoc Thai, Thai Tan, Ngoc Thu, and Kim Anh should be treated as a single entity for purposes of this new shipper review. *See* 19 CFR 351.401(f)(1); *see also* Ngoc Thai Affiliation Memo for a discussion of the proprietary aspects of this relationship.

Anvifish

Based on the record evidence in these new shipper reviews, we preliminarily find that Anvifish was not affiliated with its U.S. customer, D&T Food Company (''D&T''), within the meaning of section 771(33) of the Act for the portion of the POR that Anvifish sold subject merchandise to D&T that were then resold by D&T. In their submissions, Anvifish reported that one of D&T's owners, Daniel Yet, was affiliated to Anvifish through his ownership in an investment company. Anvifish reported that this investment company was a shareholder of Anvifish during the POR. However, the Department finds that the record evidence demonstrates that Anvifish was not affiliated with D&T through this investment company's ownership in Anvifish during the portion of the POR that Anvifish sold subject merchandise to D&T that was then resold by D&T. *See Honey from the People's Republic of China: Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review,* 70 FR 38873 (July 6, 2005) and accompanying Issues and Decision Memorandum at Comment 8 (''*Honey 2nd AR*'') (the Department found that the respondents, Jinfu PRC and Jinfu USA, were not affiliated during the period of review because the purchase of stocks was not completed during the portion of the period of review that the sales occurred). In the *Honey 2nd AR,* the Department found that the respondents were not affiliated because the certificate of stock transfer was not dated within the portion of the period of review that the sales occurred and there was ''no reliable evidence that the original owner received payment for his interest'' prior to the issuance of the certificate of stock transfer. *Id.* In this case, the Department notes that the record does not contain a certificate of stock transfer or similar documentation that identifies that this investment company obtained shares in Anvifish during the portion of the POR that Anvifish sold subject merchandise to D&T and was then resold by D&T. Although it is the Department's practice to make affiliation determinations based on the context of the execution of a stock transfer and the purchase in a company, absent this information, the Department has relied upon payment documentation as the date for when the investment company transferred funds and thus became a part owner of Anvifish. *See Honey 2nd AR,* 70 FR 38873 at Comment 8; Anvifish's Verification Report, at 6.

During the POR, Anvifish made multiple sales to D&T. *See* Memorandum to the File through Alex Villanueva, Program Manager, Office 9, from Nicole Bankhead, Senior Case Analyst: Preliminary Results of the Antidumping New Shipper Review of Frozen Fish Fillets from Vietnam: Preliminary Results Analysis Memo of Anvifish Co., Ltd. (''Anvifish'') (January 22, 2008) (''Anvifish's Preliminary Analysis Memo''), at 2. Out of these sales, all but one were made prior to the date the Department has determined as the appropriate date of affiliation, *i.e.*, investment payment date. The one sale made after the Department finds Anvifish affiliated with D&T within the meaning of section 771(33) of the Act was subsequently not resold during the

products were classifiable under tariff article code 0304.20.60.33 (Frozen Fish Fillets of the species *Pangasius* including basa and tra) of the HTSUS.

[7] The verification of Anvifish's sales and FOPs took place from November 5 through November 13, 2007. *See* Memorandum to the File through Alex Villanueva, Program Manager, Office 9, from Nicole Bankhead, Senior Case Analyst: Verification of the Sales and Factors Response of Anvifish Co., Ltd. (''Anvifish'') and its Affiliate D&T Food Company (''D&T'') in the Antidumping New Shipper Review of Frozen Fish Fillets from Vietnam (January 22, 2008) (''Anvifish's Verification Report'').

POR. Therefore, for these preliminary results, the Department is treating all but one sale made between Anvifish and D&T on an export price (''EP'') basis. However, the Department finds that Anvifish is affiliated with D&T as of the date of the payment documentation, within the meaning of section 771(33) of the Act. *See* Anvifish's Preliminary Analysis Memo.

Preliminary Intent To Rescind

Vinh Quang

Section 351.214(b)(2)(iv)(A) of the Department's regulations states that documentation establishing the date of first entry is: ''The date on which subject merchandise of the exporter or producer making the request was first entered, or withdrawn from warehouse, for consumption, or, if the exporter or producer cannot establish the date of first entry, the date on which the exporter or producer first shipped the subject merchandise for export to the United States.'' *See* 19 CFR 351.214(b)(2)(iv)(A). Additionally, section 351.214(c) of the Department's regulations states: ''An exporter or producer may request a new shipper review within one year of the date referred to in paragraph (b)(2)(iv)(A) of this section.'' *See* 19 CFR 351.214(c).

As discussed above, we preliminarily determine that Vinh Quang and New Century are a single entity. *See* Vinh Quang Affiliation Memo. Additionally, we find that as a single entity Vinh Quang and New Century shipped subject merchandise over a year prior to the POR of this new shipper review. As a result, at the time of Vinh Quang's request for review, the deadline for requesting a new shipper review of Vinh Quang and New Century's first entry of subject merchandise had passed, pursuant to sections 351.214(b)(2)(iv)(A) and 351.214(c) of the Department's regulations. *Id.* Accordingly, we find that Vinh Quang/New Century's request for a new shipper review is untimely, pursuant to sections 351.214(b)(2)(iv)(A) and 351.214(c) of the Department's regulations. *See* Vinh Quang Affiliation Memo. Therefore, the Department is preliminarily rescinding Vinh Quang's new shipper review.

Ngoc Thai

Section 351.214(b)(2)(iv)(A) of the Department's regulations states that documentation establishing the date of first entry is: ''The date on which subject merchandise of the exporter or producer making the request was first entered, or withdrawn from warehouse, for consumption, or, if the exporter or producer cannot establish the date of first entry, the date on which the exporter or producer first shipped the subject merchandise for export to the United States.'' *See* 19 CFR 351.214(b)(2)(iv)(A). Additionally, section 351.214(c) of the Department's regulations states: ''An exporter or producer may request a new shipper review within one year of the date referred to in paragraph (b)(2)(iv)(A) of this section.'' *See* 19 CFR 351.214(c).

As discussed above, we preliminarily determine that the Kim Anh Group, including Ngoc Thai, is a single entity. *See* Ngoc Thai Affiliation Memo. Additionally, we find that as a single entity the Kim Anh Group shipped subject merchandise over a year prior to the POR of this new shipper review. As a result, at the time of Ngoc Thai's request for review, the deadline for requesting a new shipper review of the Kim Anh Group's first entry of subject merchandise had passed, pursuant to sections 351.214(b)(2)(iv)(A) and 351.214(c) of the Department's regulations. *Id.* Accordingly, we find that the Kim Anh Group's request for a new shipper review is untimely, pursuant to sections 351.214(b)(2)(iv)(A) and 351.214(c) of the Department's regulations. *See* Ngoc Thai Affiliation Memo. Therefore, the Department is preliminarily rescinding Ngoc Thai's new shipper review.

New Shipper Review Bona Fide Analysis

Consistent with the Department's practice, we investigated the *bona fide* nature of the sale made by Anvifish for this new shipper review. We found that the new shipper sale by Anvifish was made on a *bona fide* basis. Based on our investigation into the *bona fide* nature of the sales, the questionnaire responses submitted by Anvifish, and our verification thereof, as well the companies' eligibility for a separate rate (*see* Separate Rates Determination section below) and the Department's preliminary determination that Anvifish was not affiliated with any exporter or producer that had previously shipped subject merchandise to the United States, we preliminarily determine that Anvifish has met the requirements to qualify as a new shipper during this POR. Therefore, for the purposes of these preliminary results of review, we are treating Anvifish's sales of subject merchandise to the United States as an appropriate transaction for this new shipper review.[8]

Facts Available (''FA'')

Section 776(a)(2) of the Tariff Act of 1930, as amended (''Act''), provides that, if an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to sections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Section 782(c)(1) of the Act provides that if an interested party ''promptly after receiving a request from {the Department} for information, notifies {the Department} that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative form in which such party is able to submit the information,'' the Department may modify the requirements to avoid imposing an unreasonable burden on that party.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act states that the Department shall not decline to consider information deemed ''deficient'' under section 782(d) if: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

[8] For more detailed discussion of this issue, please *see* Memorandum from Nicole Bankhead, Senior Case Analyst, Office 9, through Alex Villanueva, Program Manager, Office 9, to James C. Doyle, Director, Office 9: Bona Fide Nature of the Sale in the Antidumping Duty New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Anvifish Co., Ltd., (January 22, 2008).

Furthermore, section 776(b) of the Act states that if the Department ''finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority or the Commission, the administering authority or the Commission * * *, in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.'' *See also,* Statement of Administrative Action (''SAA'') accompanying the Uruguay Round Agreements Act (''URAA''), H.R. Rep. No. 103–316, Vol. 1 at 870 (1994).

Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* SAA; *Mannesmannrohren-Werke AG* v. *United States,* 77 F. Supp. 2d 1302 (CIT 1999). The Court of Appeals for the Federal Circuit (''CAFC''), in *Nippon Steel Corporation* v. *United States,* 337 F.3d 1373, 1382 (Fed. Cir. 2003) (*''Nippon Steel''*), provided an explanation of the ''failure to act to the best of its ability'' standard, stating that the ordinary meaning of ''best'' means ''one's maximum effort,'' and that the statutory mandate that a respondent act to the ''best of its ability'' requires the respondent to do the maximum it is able to do. *Id.* The CAFC acknowledged, however, that ''deliberate concealment or inaccurate reporting'' would certainly be sufficient to find that a respondent did not act to the best of its ability, although it indicated that inadequate responses to agency inquiries ''would suffice'' as well. *Id.* Compliance with the ''best of the ability'' standard is determined by assessing whether a respondent has put forth its maximum effort to provide the Department with full and complete answers to all inquiries in an investigation. *Id.* The CAFC further noted that while the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping. *Id.*

For these preliminary results, in accordance with section 776(a)(2)(A) of the Act, we have determined that the use of facts available is appropriate for Anvifish's reported indirect labor usage and its unreported containerization.

A. Labor

Under section 776(a)(2)(D) of the Act, the Department may use facts otherwise available in reaching the applicable determination if the respondent provides information but the information cannot be verified. In the original Section D questionnaire response, Anvifish stated that its reported indirect labor included supervisors, technical workers, and contract labor but that it did not keep daily records of its contract labor. *See* Anvifish's Section D Questionnaire Response, (May 4, 2007) at D–12. The Department issued two supplemental questionnaires requesting that Anvfish provide supporting documentation for its reported technical and contract labor, which were based on estimated labor hours. In its supplemental Section D questionnaire response, Anvifish stated that it did not see the need to record the working hours of the contract labor as they were not paid by the hour. *See* Anvifish's Supplemental Section D Questionnaire Response, (August 13, 2007) at 23 and Exhibit 27. In its second supplemental Section D questionnaire response, Anvifish stated that it reported its technical workers as indirect labor and provided a contract for the technical workers. *See* Anvifish's Second Supplemental Section D Questionnaire Response, (October 16, 2007) at 32 and Exhibit 28. However, at verification, Anvifish stated that they were unable to recreate the estimated hours reported for technical and contract labor in Anvifish's questionnaire responses because they did not track the actual hours. *See* Anvifish's Verification Report at 38–39 and Exhibit AV VE 15. Accordingly, the Department was unable to verify Anvifish's reported indirect labor hours for technical and contract labor. *Id.* Because Anvifish did not provide verifiable documentation for Anvifish's technical and contract labor, we applied facts available to Anvifish's consumption of indirect labor pursuant to section 776(a)(2)(D) of the Act.

Pursuant to section 776(b) of the Act, the Department may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available when the party fails to cooperate by not acting to best of its ability. *See Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review,* 62 FR 53808 (October 16, 1997); *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil,* 67 FR 55792, 55794–96 (August 30, 2002). Additionally, the Department notes that the standard for using adverse facts available (''AFA'') does not condone ''inattentiveness, carelessness, or inadequate record keeping.'' *See Nippon Steel Corp.* v. *United States,* 337 F. 3d 1373, 1382 (Fed. Cir. 2003). Accordingly, adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See SAA,* at 870. Furthermore, ''{a}ffirmative evidence of bad faith on the part of a Respondent is not required before the Department may make an adverse inference.'' *See Antidumping Countervailing Duties: Final Rule,* 62 FR 27296, 27340 (May 19, 1997).

In this instance, Anvifish failed to act to the best of its ability to provide the Department with indirect labor hours that could be verified. Anvifish reported indirect labor hours for technical and contract labor. As a respondent, Anvifish had the responsibility to accurately report its indirect labor usage rates. However, it was only at verification that it became clear that the numbers provided by Anvifish had no basis in documentary evidence of actual consumption. Despite numerous opportunities, Anvifish did not act to the best of its ability to provide accurate, verifiable information. Contrary to Anvifish's pre-verification representations, at verification the Department discovered that the indirect labor usage rates reported by Anvifish were not representative of the actual use of that factor of production. Consistent with the Department's practice in other cases where a respondent fails to cooperate to the best of its ability, and in keeping with section 776(b) of the Act, the Department finds that the use of partial AFA is warranted for Anvifish's unverifiable labor usage rates. Therefore, for the preliminary results, the Department will apply as partial AFA, the single highest month of attendance days for the technical workers to calculate the AFA labor usage rate for Anvifish's total indirect labor for technical workers and contract labor. *See Notice of Final Determination of Sales at Less than Fair Value: Tetrahydrofurfuryl Alcohol from the People's Republic of China,* 69 FR 34130 (June 18, 2004) and accompanying Issues and Decision Memorandum at Comment 1; *Notice of Final Antidumping Duty Determination of Sales at Less than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam,* 68 FR 37116 (June 23, 2003) (*''Vietnam Fish Fillets''*) and accompanying Issues and Decision Memorandum at Comment 1.

B. Containerization

Under section 776(a)(A) and (D) of the Act, the Department may use facts

otherwise available in reaching the applicable determination if the respondent withheld information that had been requested and provides information that cannot be verified. In its three Section C questionnaire responses, Anvifish did not report that it incurred containerization at the port as a sales expense for its sales of subject merchandise. However, at verification, the Department discovered that Anvifish did incur containerization at the port as a sales expense for certain of its sales of subject merchandise. *See* Anvifish's Verification Report, at 27 and GRO VE 9C. Because Anvifish withheld this data and failed to report containerization as a sales expense to the Department, despite the Department's giving Anvifish two additional opportunities to correct its U.S. sales data, we have applied facts available for Anvifish's containerization pursuant to section 776(a)(2)(A) and (D) of the Act. As partial facts available, the Department is deducting containerization using a surrogate value for those sales where Anvifish incurred this expense.

Non-Market Economy Country Status

In every Vietnamese antidumping duty (''AD'') case conducted by the Department, Vietnam has been treated as a non-market economy (''NME'') country. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. *See Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam,* 69 FR 71005 (December 8, 2004); *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the First Administrative Review,* 71 FR 14170 (March 21, 2006) (*''FFF1 Final Results''*); *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Second Administrative,* 72 FR 13242 (March 21, 2007) (*''FFF2 Final Results''*). No party to this proceeding has contested such treatment. Accordingly, we calculated normal value (''NV'') in accordance with section 773(c) of the Act, which applies to NME countries.

Separate Rates Determination

A designation of a country as an NME remains in effect until it is revoked by the Department. *See* section 771(18)(C) of the Act. Accordingly, there is a rebuttable presumption that all companies within Vietnam are subject to government control and, thus, should be assessed a single antidumping duty rate.

It is the Department's standard policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in the *Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of China* (*''Sparklers''*), 56 FR 20588 (May 6, 1991), as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) (*''Silicon Carbide''*).

A. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; and (2) any legislative enactments decentralizing control of companies.

Throughout the course of this proceeding, Anvifish has placed sufficient evidence on the record that demonstrate the absence of *de jure* control. Specifically, Anvifish has placed on the record a number of documents to demonstrate absence of *de jure* control including business licenses, financial statements, and narrative information regarding government laws and regulations on corporate ownership, and the companies' operations and selection of management. The evidence provided by Anvifish supports a finding of a *de jure* absence of governmental control over its export activities. Thus, we believe that the evidence on the record supports a preliminary finding of an absence of *de jure* government control based on: (1) An absence of restrictive stipulations associated with the exporter's business license; and (2) the legal authority on the record decentralizing control over the respondent.

B. Absence of De Facto Control

The absence of *de facto* governmental control over exports is based on whether a company: (1) Sets its own export prices independent of the government and other exporters; (2) retains the proceeds from its export sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) has the authority to negotiate and sign contracts and other agreements; and (4) has autonomy from the government regarding the selection of management. *See Silicon Carbide,* 59 FR at 22587 and *Sparklers,* 56 FR at 20589; *see, also, Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China,* 60 FR 22544, 22545 (May 8, 1995).

The Department conducted a separate-rates analysis for Anvifish. In its questionnaire responses, Anvifish submitted evidence indicating an absence of *de facto* governmental control over its export activities. Specifically, this evidence indicates that: (1) Anvifish sets its own export prices independent of the government and without the approval of a government authority; (2) Anvifish retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) Anvifish has a general manager, branch manager or division manager with the authority to negotiate and bind the company in an agreement; (4) the general manager is selected by the board of directors or company employees, and the general manager appoints the deputy managers and the manager of each department; and (5) there is no restriction on Anvifish's use of export revenues. The questionnaire responses of Anvifish do not suggest that pricing is coordinated among exporters. During our analysis of the information on the record, we found no information indicating the existence of government control. Therefore, the Department preliminarily finds that Anvifish has established *prima facie* that they qualify for separate rates under the criteria established by *Silicon Carbide* and *Sparklers.*

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's FOPs, valued in a surrogate market economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market economy countries that are: (1) At a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the ''Normal Value'' section

below and in the Memorandum to the File through Alex Villanueva, Program Manager, Office 9 from Julia Hancock, Senior Analyst, Office 9: Antidumping Duty Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Surrogate Values for the Preliminary Results, (January 22, 2008) (''Factor Valuation Memo'').

As discussed in the ''Separate Rates'' section, above, the Department considers Vietnam to be an NME country. The Department has treated Vietnam as an NME country in all previous antidumping proceedings. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. None of the parties to this proceeding contested such treatment. Accordingly, we treated Vietnam as an NME country for purposes of these reviews and calculated NV, pursuant to section 773(c) of the Act, by valuing the FOPs in a surrogate country.

The Department determined that Bangladesh, Pakistan, India, Indonesia, and Sri Lanka are countries comparable to Vietnam in terms of economic development.[9] Once it has identified economically comparable countries, the Department's practice is to select an appropriate surrogate country from the list based on the availability and reliability of data from the countries. *See Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process* (March 1, 2004). In this case, we have found that Bangladesh is a significant producer of comparable merchandise. We find Bangladesh to be a reliable source for surrogate values because Bangladesh is at a similar level of economic development pursuant to section 773(c)(4) of the Act, is a significant producer of comparable merchandise, and has publicly available and reliable data. *See* Memorandum to the File, through James C. Doyle, Office Director, Office 9, Import Administration, and Alex Villanueva, Program Manager, Office 9, from Julia Hancock, Senior Analyst, Re: New Shipper Reviews of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Selection of a Surrogate Country, (January 22, 2008). Thus, we have selected Bangladesh as the primary surrogate country for this administrative review. However, in certain instances where Bangladeshi data was not available, we used data from Indian sources.

Fair Value Comparisons

To determine whether sales of the subject merchandise made by Anvifish to the United States were at prices below NV, we compared Anvifish's export price (''EP'') to NV, as described below.

Export Price

For Anvifish's EP sales, we used the EP methodology, pursuant to section 772(a) of the Act, because the first sale to an unaffiliated purchaser was made prior to importation and CEP was not otherwise warranted by the facts on the record. We calculated EP based on the cost and freight foreign port price to the first unaffiliated purchaser in the United States. For these EP sales, in accordance with section 772(c) of the Act, we also deducted billing adjustments, foreign inland freight, foreign brokerage and handling, foreign cold storage, and international ocean freight from the starting price (or gross unit price), where appropriate.

Where movement expenses were provided by NME-service providers or paid for in NME currency, we valued these services using either Bangladeshi or Indian surrogate values. *See* Factor Valuation Memo. Where applicable, we used the actual reported expense for those movement expenses provided by ME suppliers and paid for in ME currency.

Normal Value

Section 773(c)(1) of the Act provides that, in the case of an NME, the Department shall determine NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. Because information on the record does not permit the calculation of NV using home-market prices, third-country prices, or constructed value and no party has argued otherwise, we calculated NV based on FOPs reported by Anvifish, pursuant to sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c). As the basis for NV, Anvifish provided FOPs used in each of the stages for processing frozen fish fillets.

To calculate NV, we valued Anvifish's reported per-unit factor quantities using publicly available Bangladeshi, Indian, and Indonesian surrogate values. In selecting surrogate values, we considered the quality, specificity, and contemporaneity of the available values. As appropriate, we adjusted the value of material inputs to account for delivery costs. Specifically, we added surrogate freight costs to surrogate values using the reported distances from the Vietnam port to the Vietnam factory, or from the domestic supplier to the factory, where appropriate. This adjustment is in accordance with the decision of the CAFC in *Sigma Corp.* v. *United States,* 117 F.3d 1401, 1407–1408 (Fed. Cir. 1997).

For those values not contemporaneous with the POR, we adjusted for inflation using data published in the International Monetary Fund's *International Financial Statistics.* Import data from South Korea, Thailand and Indonesia were excluded from the surrogate country import data due to generally available export subsidies. *See China Nat'l Mach. Import & Export Corp.* v. *United States,* CIT 01–1114, 293 F. Supp. 2d 1334 (CIT 2003), *aff'd* 104 Fed. Appx. 183 (Fed. Cir. 2004), and *Certain Cut-to-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review,* 70 FR 12651, and accompanying Issues and Decision Memorandum at Comment 4 (March 15, 2005). Additionally, we excluded prices from NME countries and imports that were labeled as originating from an ''unspecified'' Asian country. The Department excluded these imports because it could not ascertain whether they were from either an NME country or a country with general export subsidies. We converted the surrogate values to U.S. dollars as appropriate, using the official exchange rate recorded on the dates of sale of subject merchandise in this case, obtained from Import Administration's Web site at *http://www.ia.ita.doc.gov/exchange/index.html.* For further detail, *see* Factor Valuation Memo.

Preliminary Results of the Reviews

As a result of our review, we preliminarily find that the following margins exist for the period August 1, 2006, through January 1, 2007:

CERTAIN FROZEN FISH FILLETS FROM VIETNAM

Manufacturer/exporter	Weighted-average margin (percent)
Anvifish	34.33

The Department will disclose to parties of this proceeding the calculations performed in reaching the

[9] *See* Memorandum from Ron Lorentzen, Director, Office of Policy, to Alex Villanueva, Program Manager, China/NME Group, Office 9: Antidumping Administrative Review of Certain Frozen Fish Fillets (''Frozen Fish'') from the Socialist Republic of Vietnam: Request for a List of Surrogate Countries (May 23, 2007).

preliminary results within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results in an antidumping duty new shipper review, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of these preliminary results. Interested parties must provide the Department with supporting documentation for the publicly available information to value each FOP. Additionally, in accordance with 19 CFR 351.301(c)(1), for the final results of this new shipper review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. 19 CFR 351.301(c)(1) does not envision the submission of additional, previously absent-from-the-record alternative surrogate value information. Therefore, parties should take note that surrogate value data that are introduced as rebuttal to a surrogate value submission generally will not fall within the meaning and applicability of 19 CFR 351.301(c)(1). *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission,* in Part, 72 FR 58809 (October 17, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of this new shipper review. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 5 days after the deadline for submitting the case briefs. *See* 19 CFR 351.309(d). The Department requests that interested parties provide an executive summary of each argument contained within the case briefs and rebuttal briefs.

Any interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If we receive a request for a hearing, we plan to hold the hearing seven days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

The Department intends to issue the final results of these new shipper reviews, which will include the results of its analysis raised in any such comments, within 90 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon completion of the final results, pursuant to 19 CFR 351.212(b), the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries on a per-unit basis.[10] calculate an assessment rate on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. If these preliminary results are adopted in our final results of review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer-specific (or customer) per-unit duty assessment rates. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this is above *de minimis*.

Cash-Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this new shipper review for all shipments of subject merchandise from Anvifish entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For subject merchandise produced and exported by Anvifish, the cash deposit rate will be that established in the final results of this review (except, if the rate is zero or *de minimis*, no cash deposit will be required); (2) for subject merchandise exported by Anvifish but not manufactured by Anvifish, the cash deposit rate will continue to be the Vietnam-wide rate (*i.e.*, 63.88 percent); and (3) for subject merchandise manufactured by Anvifish, but exported by any other party, the cash deposit rate will be the rate applicable to the exporter. If the cash deposit rate calculated in the final results is zero or *de minimis*, no cash deposit will be required for those specific producer-exporter combinations. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Interested Parties

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this determination in accordance with sections 751(a)(1), 751(a)(2)(B), and 777(i) of the Act and 19 CFR 351.214(h)(i).

Dated: January 22, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–1899 Filed 1–31–08; 8:45 am]

BILLING CODE 3510–DS–P

[10] We divided the total dumping margins (calculated as the difference between NV and EP or CEP) for each importer by the total quantity of subject merchandise sold to that importer during the POR to calculate a per-unit assessment amount. We will direct CBP to assess importer-specific assessment rates based on the resulting per-unit (*i.e.*, per-kilogram) rates by the weight in kilograms of each entry of the subject merchandise during the POR.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–840]

Certain Frozen Warmwater Shrimp from India; Partial Rescission of Antidumping DutyAdministrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is rescinding the administrative reviews of the antidumping duty order on certain frozen warmwater shrimp from India for the period February 1, 2006, through January 31, 2007, for 114 companies, based on: 1) timely withdrawals of the review requests; 2) confirmed statements of no shipments during the period of review (POR); 3) our inability to locate certain companies; and/or 4) duplicated names in our notice of initiation.

EFFECTIVE DATE: February 1, 2008.

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3874.

SUPPLEMENTARY INFORMATION:

Background

On February 2, 2007, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on certain frozen warmwater shrimp from India for the period February 1, 2006, through January 31, 2007. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 72 FR 5007 (Feb. 2, 2007). Between February 21, 2007, and February 28, 2007, in accordance with 19 CFR 351.213(b)(2), certain Indian producers and exporters requested a review of this antidumping duty order. In addition, on February 28, 2007, the petitioner≤[1] and the Louisiana Shrimp Association (LSA) also requested an administrative review for numerous Indian exporters of subject merchandise in accordance with 19 CFR 351.213(b)(1).

On March 17, 2007, in accordance with 19 CFR 351.213(d)(1), the petitioner withdrew its request for review for the following companies: 1) Amison Foods Ltd.; 2) Amison Seafoods Ltd.; 3) Baby Marine (Eastern) Exports; 4) Baby Marine Exports; 5) Baby Marine Products; 6) Cherukattu Industries (Marine Div.); 7) Global Sea Foods & Hotels Ltd.; 8) HA & R Enterprises; 9) InterSea Exports Corporation; 10) Kadalkanny Frozen Foods; 11) Lotus Sea Farms; 12) National Steel; 13) National Steel & Agro Ind.; 14) Nsil Exports; 15) Premier Marine Foods; 16) R.F. Exports; and 17) Vaibhav Sea Foods.

In April 2007, the Department initiated an administrative review for 313 companies and we requested that each provide data on the quantity and value of its exports of subject merchandise to the United States during the POR. These companies are listed in the Department's notice of initiation. *See Notice of Initiation of Administrative Reviews of the Antidumping Duty Orders on Certain Frozen Warmwater Shrimp From Brazil, Ecuador, India and Thailand*, 72 FR 17100, 17102–17107 (Apr. 6, 2007) (*Notice of Initiation*).

In addition, between April and July 2007, the Department received responses to quantity and value questionnaires from certain companies that indicated that they either: 1) had no shipments of subject merchandise to the United States during the POR; or 2) were duplicated in the *Notice of Initiation*.

On July 5, 2007, in accordance with 19 CFR 351.213(d)(1), the LSA withdrew its request for review for 17 companies (*i.e*, Amison Foods Ltd.; Amison Seafoods Ltd.; Baby Marine (Eastern) Exports; Baby Marine Exports; Baby Marine Products; Cherukattu Industries (Marine Div.); Global Sea Foods & Hotels Ltd.; HA & R Enterprises; InterSea Exports Corporation; Kadalkanny Frozen Foods; Lotus Sea Farms; National Steel; National Steel & Agro Ind.; Nsil Exports; Premier Marine Foods; R.F. Exports; and Vaibhav Sea Foods).

Partial Rescission of Review

As noted above, the petitioner and the LSA both withdrew their requests for an administrative review for each of the following companies within the time limits set forth in 19 CFR 351.213(d)(1): Amison Foods Ltd.; Amison Seafoods Ltd.; Baby Marine (Eastern) Exports; Baby Marine Exports; Baby Marine Products; Cherukattu Industries (Marine Div.); Global Sea Foods & Hotels Ltd.; HA & R Enterprises; InterSea Exports Corporation; Lotus Sea Farms; National Steel; National Steel & Agro Ind.; Nsil Exports; Premier Marine Foods; R.F. Exports; and Vaibhav Sea Foods. Section 351.213(d)(1) of the Department's regulations requires that the Secretary rescind an administrative review if a party requesting a review withdraws the request within 90 days of the date of publication of the notice of initiation. Therefore, because all requests for administrative reviews were timely withdrawn for the companies listed above, in accordance with 19 CFR 351.213(d)(1), we are rescinding this review with regard to these companies.[2]

In addition, in accordance with 19 CFR 351.213(d)(3), we are rescinding the review with respect to the following 70 companies because these companies reported no shipments of subject merchandise during the POR:

1) Abad Fisheries
2) Accelerated Freeze Drying Co.
3) Allana Frozen Foods Pvt. Ltd.
4) Allanasons Ltd.
5) Amalgam Foods & Beverages Limited
6) Amulya Sea Foods
7) Anjaneya Seafoods
8) Baby Marine International
9) Bhavani Seafoods
10) Bijaya Marine Products
11) Blue Water Foods & Exports
12) BMR Exports
13) Britto Exports
14) C P Aquaculture (India) Ltd.
15) Capithan Exporting Co
16) Chemmeens (Regd.)
17) Coastal Corporation Ltd.
18) Cochin Frozen Food Exports Pvt. Ltd.
19) Corlim Marine Exports Pvt. Ltd.
20) Esmario Export Enterprises
21) Forstar Frozen Foods Pvt. Ltd.
22) Frigerio Conserva Allana Limited
23) Frontline Exports Pvt. Ltd.
24) G A Randerian Ltd.
25) GKS Business Associates Pvt. Ltd.
26) Geo Aquatic Products (P) Ltd.
27) Geo Seafoods
28) Grandtrust Overseas (P) Ltd.
29) HIC AFB Special Foods Pvt. Ltd.
30) Hiravata Ice & Cold Storage
31) Hiravati Exports Pvt. Ltd.
32) Hiravati International P. Ltd.
33) Indian Aquatic Products
34) Innovative Foods Limited/Amalgam Foods Ltd.
35) International Freezefish Exports
36) Interseas
37) Jagadeesh Marine Exports
38) Jinny Marine Traders
39) K R M Marine Exports Ltd.
40) Kalyanee Marine
41) Kay Kay Exports
42) Koluthara Exports Ltd.
43) L.G. Seafoods
44) Lewis Natural Foods Ltd.
45) Libran Cold Storages (P) Ltd.
46) M.S.C. Marine Exporters
47) Malnad Exports Pvt. Ltd.
48) Meenaxi Fisheries Pvt. Ltd.
49) Naga Hanuman Fish Packers
50) Naik Seafoods Ltd.
51) Pijikay International Exports P Ltd.
52) Pisces Seafood International
53) Raunaq Ice & Cold Storage
54) Raysons Aquatics Pvt. Ltd.
55) RBT Exports
56) Rohi Marine Private Ltd.
57) S Chanchala Combines
58) SSF Ltd.
59) Sagar Foods
60) Sagarvihar Fisheries Pvt. Ltd.
61) Sanchita Marine Products P Ltd.
62) Sawant Food Products
63) Silver Seafood

[1] The petitioner in this proceeding is the Ad Hoc Shrimp Trade Action Committee.

[2] Moreover, as noted above, the petitioner and the LSA also withdrew their requests for an administrative review for an exporter named Kadalkanny Frozen Foods. However, on April 23, 2007, Kadalkanny Frozen Foods informed the Department that it is a member of an affiliated group of companies (hereinafter referred to as ≥the Kadalkanny Group≥). On December 20, 2007, the Department collapsed the members of the Kadalkanny Group. Because there are outstanding requests for review for the remaining members of this group, we are not rescinding the review for Kadalkanny Frozen Foods.

64) Sita Marine Exports
65) Sri Satya Marine Exports
66) Sri Venkata Padmavathi Marine Foods Pvt. Ltd.
67) Sterling Foods
68) TBR Exports Pvt Ltd.
69) Teekay Maine P. Ltd.
70) Victoria Marine & Agro Exports Ltd.

We reviewed U.S. Customs and Border Protection (CBP) data and confirmed that there were no entries of subject merchandise from any of these companies. Consequently, in accordance with 19 CFR 351.213(d)(3) and consistent with our practice, we are rescinding our review for the companies listed above. *See, e.g., Certain Steel Concrete Reinforcing Bars From Turkey; Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 71 FR 65082, 65083 (Nov. 7, 2006) (*Rebar from Turkey*). *See also Certain Frozen Warmwater Shrimp From India; Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 41419 (July 21, 2006).

Further, with respect to the following companies, the Department either: 1) was unable to locate accurate addresses for them, and thus was unable to serve them with any information requests in this case; or 2) determined based on information on the record that the noted company names do not, or no longer, exist[3]: 1) AMI Food Products; 2) Atta Export; 3) Brilliant Exports; 4) Castlerock Seafoods Ltd; 5) Coastal Trawlers Ltd.; 6) Hanjar Ice and Cold Storage; 7) Haripriya Marine Food Exports; 8) I Ahamed & Company; 9) KNR Marine Exports; 10) KRM Group; 11) Nezami Rekha Sea Food; 12) Pronto Foods Pvt. Ltd.; 13) RVR Marine Products; 14) Royal Cold Storage (India) Pvt. Ltd; 15) S B Agro (India) Ltd.; 16) Saanthi Seafoods Ltd.; 17) Sharon Exports; 18) Sheimar Seafoods Ltd.; 19) Sree Vaialakshrm Exports; 20) Swarna Seafoods Ltd.; and 21) Wisdom Marine Exports. *See* the June 1, 2007, Memorandum to the File from Elizabeth Eastwood entitled, ''2006–2007 Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from Brazil, India, and Thailand: Information Regarding Incorrect Addresses.'' See also the June 4, 2007, Memorandum to the File from Elizabeth Eastwood entitled, ''Revisions to June 1, 2007, Memorandum Regarding Incorrect Addresses in the 2006–2007 Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from India.'' Subsequently, we contacted the petitioner and the LSA and requested that they provide alternate addresses for these companies. For the companies noted above, we note that neither the petitioner nor the LSA was able to provide alternate addresses or, if they did provide additional address information, the new addresses continued to be ''undeliverable.'' Consequently, in accordance with our practice, we are also rescinding our review with respect to these companies. *See Rebar from Turkey*, 71 FR at 65083.

The Department has also received information that the following company names are duplicate names: 1) Innovative Foods Limited/Amalgam Foods Limited; 2) K.V. Marine Exports; 3) M.S.C. Marine Exporters; 4) Sprint Exports; and 5) Universal Cold Storage Ltd. These names are either: 1) partial versions of names of other companies for which we initiated an administrative review (*i.e.*, Sprint Exports Pvt. Ltd. and Universal Cold Storage Private Limited); or 2) companies for which we initiated multiple administrative reviews because the petitioner, the LSA, and/or the respondent listed separate addresses for these companies in their review requests (*i.e.*, Innovative Foods Limited/Amalgam Foods Limited[4]; M.S.C. Marine Exporters[5]; and K.V. Marine Exports). Therefore, we are also rescinding the review with respect to these duplicate company names/addresses.

Finally, the Department received no–shipment responses from the following companies for which there appeared to be U.S. customs entries of subject merchandise: 1) Ayshwarya Seafood Private Limited; and 2) Triveni Fisheries (P) Ltd. We requested data on the relevant entries from CBP and determined that the entries were not reportable transactions because they were reported by another company in its quantity and value questionnaire. Under these circumstances, we determine that these companies satisfy the requirement under 19 CFR 351.213(d)(3) not to have ''entries, exports, or sales of the subject merchandise,'' and, consistent with the Department's practice, we are rescinding the review with respect to these companies. *See, e.g., Certain Steel Concrete Reinforcing Bars From Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination to Revoke in Part*, 70 FR 67665, 67666 (Nov. 8, 2005).

This notice is published in accordance with section 777(i) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: January 25, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–1895 Filed 1–31–08; 8:45 am]

BILLING CODE 3510–DR–S

[3] *See* the July 19, 2007, Memorandum from James Maeder to Stephen J. Claeys entitled, ''2006-2007 Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from India: Selection of Respondents for Individual Review'' at Attachment 6.

[4] We are rescinding our review with respect to Innovative Foods Limited/Amalgam Foods Limited because the company had no shipments during the POR. *See* page 5, above.

[5] We are rescinding our review with respect to M.S.C. Marine Exporters because the company had no shipments during the POR. *See* page 5, above.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Freshwater Crawfish Tail Meat From the People's Republic of China: Notice of Extension of Time Limit for the Final Results of the 2005–2006 Antidumping Duty Administrative Review and 2005–2006 New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce

EFFECTIVE DATE: February 1, 2008.

FOR FURTHER INFORMATION CONTACT: Melissa Blackledge or Jeff Pedersen, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–3518 and (202) 482–2769, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 30, 2006, the Department of Commerce (''Department'') published a notice of initiation of four new shipper reviews of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (''PRC''). *See Freshwater Crawfish Tail Meat From the People's Republic of China: Initiation of Antidumping Duty New Shipper Reviews*, 71 FR 63284 (October 30, 2006). On October 31, 2006, the Department of Commerce (''Department'') published a notice of initiation of administrative review of the antidumping duty order on freshwater crawfish tail meat from the PRC. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 71 FR 63752 (October 31, 2006). On March 23, 2007, the Department aligned the time limits in the new shipper reviews with the time limits in the administrative review. *See Freshwater Crawfish Tail Meat From the People's Republic of China: Notice of*

Postponement of Time Limits for New Shipper Antidumping Duty Reviews in Conjunction With Administrative Review, 72 FR 13744 (March 23, 2007). On October 9, 2007, the Department published the preliminary results. *See Freshwater Crawfish Tail Meat From the People's Republic of China: Preliminary Results and Partial Rescission of the 2005–2006 Antidumping Duty Administrative Review and Preliminary Intent to Rescind 2005–2006 New Shipper Reviews*, 72 FR 57288 (October 9, 2007). These reviews cover the period September 1, 2005, through August 31, 2006. The final results of the administrative review and the new shipper reviews are currently due by February 6, 2008.

Extension of Time Limit for Final Results of Reviews

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), the Department shall make a final determination in an administrative review of an antidumping duty order within 120 days after the date on which the preliminary results were published. The Act further provides, however, that the Department may extend that 120-day period to 180 days after publication of the preliminary results if it determines it is not practicable to complete the review within the foregoing time period.

The Department finds that it is not practicable to complete the final results of the administrative review and new shipper reviews of freshwater crawfish tail meat from the PRC within the 120-day period because it requires additional time to analyze a complicated sales reporting issue. In accordance with section 751(a)(3)(A) of the Act, the Department is fully extending the time period for completion of the final results of these reviews by 60 days to 180 days after the date on which the preliminary results were published. Therefore, the final results are now due no later than April 6, 2008. However, as that date falls on a Sunday, the final results will be due no later than the next business day, Monday, April 7, 2008.

This notice is published in accordance with sections 751(a)(3)(A) and 777(i) of the Act and 19 CFR 351.213(h)(2).

Dated: January 25, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–1910 Filed 1–31–08; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (''Sunset'') Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') is automatically initiating a five-year review (''Sunset Review'') of the antidumping duty orders listed below. The International Trade Commission (''the Commission'') is publishing concurrently with this notice its notice of Institution of Five-Year Review which covers the same orders.

EFFECTIVE DATE: February 1, 2008.

FOR FURTHER INFORMATION CONTACT: The Department official identified in the *Initiation of Review(s)* section below at AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th & Constitution Ave., NW., Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

The Department's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin,* 63 FR 18871 (April 16, 1998).

Initiation of Reviews

In accordance with 19 CFR 351.218(c), we are initiating the Sunset Review of the following antidumping duty orders:

DOC case No.	ITC case No.	Country	Product	Department contact
A–821–817	731–TA–991	Russia	Silicon Metal	Dana Mermelstein (202) 482–1391
A–489–807	731–TA–745	Turkey	Steel Concrete Reinforcing Bars (2nd Review).	Brandon Farlander (202) 482–0182

Filing Information

As a courtesy, we are making information related to Sunset proceedings, including copies of the pertinent statute and Department's regulations, the Department's schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on the Department's sunset Internet Web site at the following address: ''*http://ia.ita.doc.gov/sunset/*.'' All submissions in these Sunset Reviews must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303.

Pursuant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Because deadlines in Sunset Reviews can be very short, we urge interested parties to apply for access to proprietary information under administrative protective order (''APO'') immediately following publication in the **Federal Register** of the notice of initiation of the sunset review. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required From Interested Parties

Domestic interested parties (defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b)) wishing to participate in these Sunset Reviews must respond not later than 15 days after the date of publication in the

Federal Register of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the orders without further review. *See* 19 CFR 351.218(d)(1)(iii).

For sunset reviews of countervailing duty orders, parties wishing the Department to consider arguments that countervailable subsidy programs have been terminated must include with their substantive responses information and documentation addressing whether the changes to the program were (1) limited to an individual firm or firms and (2) effected by an official act of the government. Further, a party claiming program termination is expected to document that there are no residual benefits under the program and that substitute programs have not been introduced. *Cf.* 19 CFR 351.526(b) and (d). If a party maintains that any of the subsidies countervailed by the Department were not conferred pursuant to a subsidy program, that party should nevertheless address the applicability of the factors set forth in 19 CFR 351.526(b) and (d). Similarly, parties wishing the Department to consider whether a company's change in ownership has extinguished the benefit from prior non-recurring, allocable, subsidies must include with their substantive responses information and documentation supporting their claim that all or almost all of the company's shares or assets were sold in an arm's length transaction, at a price representing fair market value, as described in the *Notice of Final Modification of Agency Practice Under Section 123 of the Uruguay Round Agreements Act*, 68 FR 37125 (June 23, 2003) (''*Modification Notice*''). *See Modification Notice* for a discussion of the types of information and documentation the Department requires.

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that *all parties* wishing to participate in the Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the Commission's information requirements. Please consult the Department's regulations for information regarding the Department's conduct of Sunset Reviews.[1] Please consult the Department's regulations at 19 CFR Part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: January 23, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–1896 Filed 1–31–08; 8:45 am]

BILLING CODE 3510–DS–P

[1] In comments made on the interim final sunset regulations, a number of parties stated that the proposed five-day period for rebuttals to substantive responses to a notice of initiation was insufficient. This requirement was retained in the final sunset regulations at 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), however, the Department will consider individual requests for extension of that five-day deadline based upon a showing of good cause.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Public Meeting

SUMMARY: The Advisory Committee on Commercial Remote Sensing (ACCRES) will meet March 27, 2008.

DATE AND TIME: The meeting is scheduled as follows:

March 27, 2008, 9 a.m.–4 p.m. The first part of this meeting will be closed to the public. The public portion of the meeting will begin at 1 p.m.

ADDRESSES: The meeting will be held in the Auditorium of the National Association of Home Builders Building, Washington, DC, located at 1201 15th Street, NW., Washington, DC 20005. While open to the public, seating capacity may be limited.

SUPPLEMENTARY INFORMATION: As required by section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1982), notice is hereby given of the meeting of ACCRES. ACCRES was established by the Secretary of Commerce (Secretary) on May 21, 2002, to advise the Secretary through the Under Secretary of Commerce for Oceans and Atmosphere on long- and short-range strategies for the licensing of commercial remote sensing satellite systems.

Matters To Be Considered

The first part of the meeting will be closed to the public pursuant to Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, as amended by Section 5(c) of the Government in Sunshine Act, Pub. L. 94–409 and in accordance with Section 552b(c)(1) of Title 5, United States Code. Accordingly, portions of this meeting which involve the ongoing review and implementation of the April 2003 U.S. Commercial Remote Sensing Space Policy and related national security and foreign policy considerations for NOAA's licensing decisions are closed to the public. These briefings are likely to disclose matters that are specifically authorized under criteria established by Executive Order 12958 to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order.

All other portions of the meeting will be open to the public. During the open portion of the meeting, the Committee will receive updates on NOAA's licensing activities and there will be a presentation on orbital debris. The committee will also be available to receive public comments on its activities.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for special accommodations may be directed to ACCRES, NOAA/NESDIS International and Interagency Affairs Office, 1335 East-West Highway, Room 7311, Silver Spring, Maryland 20910.

Additional Information and Public Comments

Any member of the public wishing further information concerning the meeting or who wishes to submit oral or written comments should contact Kay Weston, Designated Federal Officer for ACCRES, NOAA/NESDIS International and Interagency Affairs Office, 1335 East-West Highway, Room 7311, Silver Spring, Maryland 20910. Copies of the draft meeting agenda can be obtained from David Hasenauer at (301) 713–2024 ext. 207, fax (301) 713–2032, or e-mail *David.Hasenauer@noaa.gov*.

The ACCRES expects that public statements presented at its meetings will not be repetitive of previously-submitted oral or written statements. In general, each individual or group making an oral presentation may be limited to a total time of five minutes. Written comments (please provide at least 13 copies) received in the NOAA/

NESDIS International and Interagency Affairs Office on or before March 20, 2008, will be provided to Committee members in advance of the meeting. Comments received too close to the meeting date will normally be provided to Committee members at the meeting.

FOR FURTHER INFORMATION CONTACT: Kay Weston, NOAA/NESDIS International and Interagency Affairs, 1335 East West Highway, Room 7313, Silver Spring, Maryland 20910; telephone (301) 713–2024 x205, fax (301) 713–2032, e-mail *Kay.Weston@noaa.gov*, or David Hasenauer at telephone (301) 713–2024 x207, e-mail *David.Hasenauer@noaa.gov*.

Mary E. Kicza,

Assistant Administrator for Satellite and Information Services.

[FR Doc. E8–1814 Filed 1–31–08; 8:45 am]

BILLING CODE 3510–HR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DoD–2007–OS–0108]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by March 3, 2008.

Title and OMB Number: Revitalizing Base Closure Communities, Economic Development Conveyance Annual Financial Statement; OMB Number 0790–0004.

Type of Request: Extension.

Number of Respondents: 79.

Responses Per Respondent: 1.

Annual Responses: 79

Average Burden Per Response: 40 hours.

Annual Burden Hours: 3,160.

Needs and Uses: This information collection requirement is necessary to verify that Local Redevelopment Authority (LRA) recipients of non-cost Economic Development Conveyances (EDCs) are in compliance with the requirement that the LRA reinvest proceeds from the use of EDC property for seven years.

Affected Public: State, local or tribal governments; not-for-profit institutions.

Frequency: Annual.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Sharon Mar.

Written comments and recommendations on the proposed information collection should be sent to Ms. Mar at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503. Comments may be e-mailed to Ms. Mar at *Sharon_Mar@omb.eop.gov*.

You may also submit comments, identified by docket number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: January 25, 2008.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–1851 Filed 1–31–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DoD–2007–OS–0091]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Dates: Consideration will be given to all comments received by March 3, 2008.

Title, Form, and OMB Number: Survivor Benefit Plan (SBP)/Reserve Component (RC) SBP Request for Deemed Election; DD Form 2656–10; OMB Number 0704–TBD.

Type of Request: New.

Number of Respondents: 1,200.

Responses Per Respondent: 1.

Annual Responses: 1,200.

Average Burden Per Response: 20 minutes.

Annual Burden Hours: 400.

Needs and Uses: This information collection requirement is necessary to properly identify the former spouse who is eligible to request a deemed SBP election on behalf of the member. Since a Uniformed Services member may have more than one former spouse, the requested information will serve to identify the correct former spouse.

Affected Public: Individuals or households.

Frequency: On Occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Ms. Sharon Mar.

Written comments and recommendations on the proposed information collection should be sent to Ms. Mar at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503. Comments may be e-mail to Ms. Mar at *Sharon_Mar@omb.eop.gov*.

You may also submit comments, identified by docket number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: January 25, 2008.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–1856 Filed 1–31–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DoD–2007–OS–0090]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Dates: Consideration will be given to all comments received by March 3, 2008.

Title, Form, And OMB Number: Request for Verification of Birth; DD Form 372; OMB Control Number 0704–0006.

Type Of Request: Extension.

Number Of Respondents: 100,000.

Responses Per Respondent: 1.

Annual Responses: 100,000.

Average Burden Per Response: 5 minutes.

Annual Burden Hours: 8,300.

Needs And Uses: Title 10, U.S.C. 505, 532, 3253, and 8253 require applicants meet minimum and maximum age and citizenship requirements for enlistment into the Armed Forces. If an applicant is unable to provide a birth certificate, the recruiter will forward a DD Form 372, ''Request for Verification of Birth,'' to a state or local agency requesting verification of the applicant's birth date. This verification of birth ensures that the applicant does not fall outside the age limitations, and that the applicant's place of birth supports the citizenship status claimed by the applicant.

Affected Public: State, local or tribal government.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Ms. Sharon Mar.

Written comments and recommendations on the proposed information collection should be sent to Ms. Mar at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503. Comments may be e-mailed to Ms. Mar at *Sharon_Mar@omb.eop.gov*.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: January 25, 2008.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–1857 Filed 1–31–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DoD–2007–OS–0055]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Dates: Consideration will be given to all comments received by March 3, 2008.

Title, Form, and OMB Number: Application for Discharge of Member or Survivor of Member of Group Certified to Have Performed Active Duty with the Armed Forces of the United States; DD Form 2168; OMB Number 0704–0100.

Type of Request: Extension.

Number of Respondents: 2,700.

Responses Per Respondent: 1.

Annual Responses: 2,700.

Average Burden Per Response: 30 minutes.

Annual Burden Hours: 1,350.

Needs and Uses: This information collection requirement is necessary to implement Public Law 95–202, section 401 (codified at 38 U.S.C. 106 Note) which directs the Secretary of Defense to determine if civilian employment or contractual service rendered by groups to the Armed Forces of the United States shall be considered active duty. This information is collected on DD Form 2168, ''Application for Discharge of Member or Survivor of Member of Group Certified to Have Performed Active Duty with the Armed Force of the United States'' which provides the necessary information to assist each of the Military Departments in determining if an applicant was a member of a group which has performed active military service. Those individuals who have been recognized as a member of an approved group are eligible for benefits provided for by laws administered by the Veteran's Administration.

Affected Public: Individuals or households.

Frequency: On Occasion

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Ms. Sharon Mar.

Written comments and recommendations on the proposed information collection should be sent to Ms. Mar at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503. Comments may be e-mail to Ms. Mar at *Sharon_Mar@omb.eop.gov*.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: January 25, 2008.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–1858 Filed 1–31–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket No. USA–2007–0014]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by March 3, 2008.

Title and OMB Number: Assessing Human Response to Military Impulse Noise; OMB Control Number 0710–TBD.

Type of Request: New.

Number of Respondents: 2,975.

Responses per Respondent: 1.

Annual Responses: 2,975.

Average Burden per Response: 1.349 hours average.

Annual Burden Hours: 4,013.

Needs and Uses: This information collection requirement is necessary to obtain information on the relationship between community annoyance and complaints, related to impulsive noise from military installations. The information will provide the necessary tools and guidance for military installations to effectively balance the need for training operations at military installations with public safety and welfare. The information will be gathered over a period of five years.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Jim Laity.

Written comments and recommendations on the proposed information collection should be sent to Mr. Laity at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: January 25, 2008.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–1855 Filed 1–31–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research—Disability and Rehabilitation Research Projects and Centers Program—Disability Rehabilitation Research Projects (DRRPs), Rehabilitation Research and Training Centers (RRTCs), and Rehabilitation Engineering Research Centers (RERCs)

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), Department of Education.

ACTION: Notice of final priorities for DRRPs, RRTCs, and RERCs.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services announces certain funding priorities for the Disability and Rehabilitation Research Projects and Centers Program administered by the National Institute on Disability and Rehabilitation Research (NIDRR). Specifically, this notice announces nine priorities for DRRPs, five priorities for RRTCs, and six priorities for RERCs. The Assistant Secretary may use these priorities for competitions in fiscal year (FY) 2008 and later years. We take this action to focus research attention on areas of national need. We intend these priorities to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: *Effective Date:* These priorities are effective March 3, 2008.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 6029, Potomac Center Plaza, Washington, DC 20202–2700. Telephone: (202) 245–7462 or via Internet: *donna.nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: We published a notice of proposed priorities (NPP) for NIDRR's Disability and Rehabilitation Research Projects and Centers Program in the **Federal Register** on August 31, 2007 (72 FR 50516). The NPP included a background statement that described our rationale for each priority proposed in that notice.

In this notice, we are announcing nine priorities for DRRPs, five priorities for RRTCs, and six priorities for RERCs.

For DRRPs, the final priorities are:

• *Priority 1*—Health Care Coordination for Individuals With Physical Disabilities.

• *Priority 2*—Health and Health Care Disparities Among Individuals With Disabilities.

• *Priority 3*—Traumatic Brain Injury Model Systems (TBIMS) Centers Collaborative Research Projects.

• *Priority 4*—Classification and Measurement of Medical Rehabilitation Interventions.

• *Priority 5*—Vocational Rehabilitation Service Models for Individuals With Autism Spectrum Disorders.

• *Priority 6*—Center on Knowledge Translation for Technology Transfer.

• *Priority 7*—Asset Accumulation and Economic Self-Sufficiency for Individuals With Disabilities.

• *Priority 8*—Technology Access in Resource-Limited Environments.

• *Priority 9*—Research and Knowledge Translation Center for Individuals With Disabilities and Their Families.

For RRTCs, the final priorities are:

• *Priority 10*—General Rehabilitation Research and Training Center (RRTC) Requirements.

• *Priority 11*—Personal Assistance Services (PAS) in the 21st Century.

• *Priority 12*—Disability Statistics and Demographics.

• *Priority 13*—Health and Function Across the Lifespan of Individuals With Intellectual and Developmental Disabilities.

• *Priority 14*—Community Living and Employment for Individuals With Intellectual and Developmental Disabilities.

For RERCs, the final priorities are:

• *Priority 15*—RERC for Hearing Enhancement.

• *Priority 16*—RERC for Accessible Public Transportation.

• *Priority 17*—RERC for Prosthetics and Orthotics.
• *Priority 18*—RERC for Communication Enhancement.
• *Priority 19*—RERC for Universal Interface and Information Technology Access.
• *Priority 20*—RERC for Wheeled Mobility.

The Department is not finalizing certain priorities that were proposed in the NPP; we identify those priorities in the *Analysis of Comments and Changes* section of this notice of final priorities (NFP). The Department intends to revisit some of the priorities not being finalized in this NFP and to publish revised versions of those priorities in one or more separate notices of proposed priorities.

There are also other differences between the NPP and this NFP. Specifically, we have made changes to the following priorities: Priority 3—Traumatic Brain Injury Model Systems (TBIMS) Centers Collaborative Research Projects (Proposed Priority 4 in the NPP); Priority 6—Center on Knowledge Translation for Technology Transfer (Proposed Priority 7—Center on Knowledge Translation for Assistive Technology Transfer in the NPP); Priority 8—Technology Access in Resource-Limited Environments (Proposed Priority 9—Technology Transfer in Resource-Limited Environments in the NPP); Priority 9—Research and Knowledge Translation Center for Individuals With Disabilities and Their Families (Proposed Priority 10 in the NPP); Priority 10—General Rehabilitation Research and Training Center (RRTC) Requirements (Proposed Priority 11 in the NPP); Priority 11—Personal Assistance Services (PAS) in the 21st Century (Proposed Priority 15 in the NPP); Priority 14—Community Living and Employment for Individuals With Intellectual and Developmental Disabilities (Proposed Priority 21—Participation and Community Living for Individuals With Intellectual and Developmental Disabilities in the NPP); and Priority 15—RERC for Hearing Enhancement (Proposed Priority 22 in the NPP).

Analysis of Comments and Changes

In response to our invitation in the NPP, 90 parties submitted comments on the proposed priorities that are announced in this NFP.

An analysis of the comments and the changes in the priorities since the publication of the NPP follows. We discuss substantive issues under the priorities to which they pertain.

Generally, we do not address technical and other minor changes, or suggested changes the law does not authorize us to make under the applicable statutory authority. In addition, we do not address general comments that raised concerns not directly related to the proposed priorities.

Proposed Priority 2—Assistive Technology Reuse; Proposed Priority 12—Enhancing the Health and Wellness of Individuals With Neuromuscular Diseases; and Proposed Priority 13—Enhancing the Health and Wellness of Individuals With Arthritis

Comments: None.

Discussion: In order to make NIDRR's resources available for work that builds strategically on new initiatives and priorities in OSERS and the Department, NIDRR has decided not to finalize Proposed Priority 2—Assistive Technology Reuse; Proposed Priority 12—Enhancing the Health and Wellness of Individuals With Neuromuscular Diseases; and Proposed Priority 13—Enhancing the Health and Wellness of Individuals With Arthritis.

Changes: We are not including the following proposed priorities in this notice: Proposed Priority 2—Assistive Technology Reuse, Proposed Priority 12—Enhancing the Health and Wellness of Individuals With Neuromuscular Diseases, and Proposed Priority 13—Enhancing the Health and Wellness of Individuals With Arthritis.

Proposed Priority 14—Stroke Rehabilitation; Proposed Priority 16—Participation and Community Living for Individuals With Psychiatric Disabilities; Proposed Priority 17—Multiple Sclerosis: Interventions to Maximize Health, Well Being, and Participation; and Proposed Priority 18—Aging With Physical Disability: Reducing Secondary Conditions and Enhancing Health and Participation

Comment: We received seven comments seeking clarification on terms used in proposed priorities 14, 16, 17, and 18.

Discussion: NIDRR appreciates the feedback provided by commenters regarding these priorities; however, we have decided not to finalize these priorities at this time. Instead, we intend to revisit these five priorities and to publish one or more new notices proposing revised versions of them. The Department takes this action to better align the priorities with other work being done by OSERS. Specifically, we intend to revise these priorities to focus on outcomes related to employment and vocational rehabilitation services. A focus on employment and vocational rehabilitation services outcomes is consistent with the work being done by other programs within OSERS.

Changes: We are not including the following proposed priorities in this notice: Proposed Priority 14—Stroke Rehabilitation; Proposed Priority 16—Participation and Community Living for Individuals With Psychiatric Disabilities; Proposed Priority 17—Multiple Sclerosis: Interventions to Maximize Health, Well Being, and Participation; and Proposed Priority 18—Aging With Physical Disability: Reducing Secondary Conditions and Enhancing Health and Participation.

DRRPs

Priority 3—Traumatic Brain Injury Model Systems (TBIMS) Centers Collaborative Research Projects (Proposed Priority 4)

Comment: One commenter asked whether a study funded under this priority could include individuals with traumatic brain injury (TBI) as well as individuals with non-traumatic brain injury. The commenter noted that, while some study topics are appropriately organized along medical diagnostic boundaries, there are other topics where the problems of individuals with traumatic and non-traumatic brain injuries substantially overlap and where the ''active ingredients'' of an intervention would not be expected to vary with the etiology of the damage.

Discussion: If the proposed study is conducted for the purpose of improving the lives of persons with TBI, then the enrollment of a sample of subjects with mixed etiologies (i.e., individuals with traumatic brain injuries and individuals with non-traumatic brain injuries) in that study is permissible. Nothing in this priority prohibits an applicant from proposing a study that includes both individuals with traumatic brain injuries and individuals with non-traumatic brain injuries. The peer review process will evaluate the merits of the proposals received under this priority.

Changes: None.

Comment: None.

Discussion: Upon further review of this priority, NIDRR determined that it is appropriate to identify the types of service providers to whom research results must be disseminated. NIDRR believes that it is particularly important to disseminate the results of the research conducted under this priority to vocational rehabilitation and independent living service providers described in Titles I and VII of the Rehabilitation Act of 1973, as amended. At least five million individuals in the United States live with significant

disabilities due to TBI. A large percentage of these individuals do not return to their pre-injury vocational or community roles. The results of the research sponsored under this priority have the potential to be of great utility to providers of vocational rehabilitation and independent living services who serve individuals with TBI. Thus, NIDRR decided to identify these types of service providers as examples of audiences to whom the research results must be disseminated.

Changes: We have added vocational rehabilitation and independent living service providers as specific audiences to receive dissemination materials that result from the research carried out under this priority.

Priority 4—Classification and Measurement of Medical Rehabilitation Interventions (Proposed Priority 5)

Comment: One commenter suggested that paragraph (a) of this priority be amended to list music therapists as a specific example of ''other allied health professionals.''

Discussion: The priority includes the primary allied health professionals (physical therapists, occupational therapists, and speech language pathologists) involved in rehabilitation interventions. We referred to ''other allied health professionals'' in this priority to acknowledge that there are a number of other health professionals that provide rehabilitation interventions and to allow applicants to propose research that reflects the breadth of clinical expertise that is involved in the practice of medical rehabilitation. Applicants may propose research that includes development of methods for the classification of music therapy interventions under this priority. However, NIDRR does not find it necessary to include music therapists as a specific example of ''other allied health professionals.''

Changes: None.

Priority 6—Center on Knowledge Translation for Technology Transfer (Proposed Priority 7)

Comment: None.

Discussion: NIDRR decided, upon review of the proposed priority, that limiting the activities of this priority to assistive technology was too restrictive because it would not allow applicants to focus on the range of technology developed by NIDRR funding.

Changes: The priority title has been changed to ''Center on Knowledge Translation for Technology Transfer.''

Comment: None.

Discussion: Upon further review of this priority, NIDRR has determined that the list of technology areas specified in the second paragraph is not fully inclusive of all technology areas covered by NIDRR's research portfolio, and that it, therefore, should not be a basis for limiting the scope of original research carried out by the Center.

Changes: We have revised the second paragraph of the priority by deleting the brief list of technology areas. We have clarified the language to indicate that the Center's original research and development must concentrate on no more than three technology areas that are the focus of current NIDRR technology grantees. Information on technology research funded by NIDRR can be found at *http://www.naric.com/research/pd/priority.cfm*. Each applicant must define and justify its focus. The peer review panel will evaluate the merits of each proposal under this priority.

Comment: One commenter noted that requiring a grantee under this priority to focus on no more than three technology areas limits the usefulness of the Center. With this restriction, the commenter argued, the grantee would not be able to provide training and technical assistance to RERCs and other technology-related NIDRR grantees whose research and development activities fall outside of the selected technology areas.

Two other commenters expressed a concern that, by focusing only on technology produced with NIDRR resources, this priority lacked a broad approach to transferring technology for use by people with disabilities.

Discussion: NIDRR believes that limiting the Center's original research and development activities under this priority to specific technology areas that are the focus of current NIDRR-technology grantees is appropriate and that this limitation does not diminish the usefulness of the Center. Information on technology research funded by NIDRR can be found at *http://www.naric.com/research/pd/priority.cfm.*

The purpose of this priority is three-fold: (1) Identifying and compiling existing information on how the results of scientifically based research can be used to develop and improve technology for persons with disabilities (pursuant to paragraphs (a)(1) and (b)(1) of the priority), (2) conducting research and development in a limited number of specific technology areas (pursuant to paragraphs (a)(2), (b)(2), and (b)(3) of the priority), and (3) providing training and technical assistance to NIDRR-funded technology grantees to help them enhance their technology transfer activities.

The limitation on how many technology areas on which a Center may focus only applies to its original research and development. We believe this limitation helps ensure the feasibility and quality of the proposed projects and increases the likelihood of achieving planned outcomes by ensuring that funding is not spread across too many projects. NIDRR understands that the findings from the Center's original research may not be applicable to the work of all NIDRR-funded technology grantees. However, we believe that the Center's compilation of existing research on the knowledge translation for technology transfer will enable it to provide all of NIDRR's research grantees with technical assistance on knowledge translation for technology transfer more generally.

In response to the two commenters' concerns about the priority's limited approach to transferring technology for individuals with disabilities, we acknowledge that the training and technical assistance components of this priority are designed to assist current NIDRR technology grantees with their technology transfer activities. NIDRR believes that it is critical to ensure that the results of its investment in technology are transferred to practitioners and ultimately to the individuals with disabilities who can benefit from these technological developments.

Changes: NIDRR has revised the second paragraph of the priority to clarify that the limit on technology areas only applies to the original research and development conducted by the Center. In addition, we have revised this paragraph to clarify that NIDRR intends that the information identified and collected by the Center in accordance with paragraphs (a)(1) and (b)(1) of the priority will serve as a knowledge base for the training and technical assistance to be provided to NIDRR technology grantees.

Comment: Two commenters suggested that paragraph (c) of the priority should be clarified to articulate the role of NIDRR-funded technology grantees who are to receive the training and technical assistance provided by the Center, including RERCs that will be funded in FY 2008. These commenters expressed concern that the Center would not be able to ensure the outcome of increased utilization of validated best practices pursuant to paragraph (c) of the priority if NIDRR-funded technology grantees are not required to receive and implement the training and technical assistance offered by the Center.

Discussion: According to the priority, the Center must contribute to—not

ensure—the outcome of increased utilization of validated best practices for knowledge translation for technology transfer. Toward that end, this priority describes the training and technical assistance that must be provided by the Center. The priority cannot specify the role or requirements of previously funded NIDRR technology grantees. To promote the training and technical assistance provided by the Center, NIDRR will facilitate and coordinate effective collaborative relationships between the Center and NIDRR-funded technology grantees through its project monitoring efforts.

Changes: None.

Priority 7—Asset Accumulation and Economic Self-Sufficiency for Individuals With Disabilities (Proposed Priority 8)

Comment: One commenter recommended that projects funded under this priority be required to use Federal demonstration authority to develop and field test methods and procedures that produce sustainable ''transformational reforms'' within Federal and State policies and program rules.

Discussion: We assume that by ''Federal demonstration authority'' the commenter is referring to the authority under the Rehabilitation Act of 1973, as amended, for the DRRPs to conduct demonstration projects. The DRRP mechanism under which this priority is authorized (see section 204(a) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 764(a)) enables grantees to conduct demonstrations to maximize the economic and social self-sufficiency of individuals with disabilities. Under this priority, an applicant could propose to conduct demonstrations to develop and field-test methods for producing sustainable changes to Federal and State policies and program rules that impact the economic self-sufficiency of individuals with disabilities. NIDRR does not have a sufficient basis for requiring that all applicants propose such demonstrations or methods. The peer review panel will evaluate the merits of each proposal under this priority.

Changes: None.

Comment: One commenter recommended that the DRRP under this priority be required to focus exclusively on increasing the understanding of the differences of how disability-specific policies, on the one hand, and general policies, on the other hand, differ in addressing asset accumulation and economic self-sufficiency issues, and changes in systems that are needed to overcome barriers to savings and asset building for individuals with disabilities.

Discussion: Under this priority, an applicant could focus on increasing the understanding of the differences between disability-specific and generic policies and changes in systems that are needed to overcome barriers to savings and asset building for individuals with disabilities. Nothing in the priority precludes an applicant from proposing to focus on these types of systems-level analyses. However, the DRRP funded under this priority also must generate new knowledge about individual-level characteristics that may affect savings and asset accumulation, as described in paragraph (a) of the priority. Accordingly, if an applicant chooses to focus on the type of systems-level analysis suggested by the commenter, it must also design its project to generate new knowledge about individual-level characteristics.

Changes: None.

Comment: Three commenters recommended that the DRRP funded under this priority be required to provide to the disability community continuously-updated information on relevant State and Federal policy changes related to asset accumulation and economic self-sufficiency.

Discussion: Within the framework of this priority, an applicant could propose to provide to the disability community continuously-updated information on relevant State and Federal policy changes. Nothing in the priority precludes an applicant from proposing to provide this type of service. The peer review panel will evaluate the merits of the proposals received under this priority.

Changes: None.

Comment: One commenter suggested that the DRRP funded under this priority develop partnerships with the Social Security Administration and the Department of Labor to promote cross-agency data collection efforts.

Discussion: Under this priority, an applicant could propose that the DRRP develop partnerships with the Social Security Administration and the Department of Labor to promote cross-agency data collection efforts. While nothing in the priority precludes an applicant from proposing such partnerships, NIDRR does not have a sufficient basis to require that each applicant do so. The peer review panel will evaluate the merits of the proposals received under this priority.

Changes: None.

Comment: Two commenters suggested that the DRRP funded under this priority focus on the barriers to, and facilitators of, economic self-sufficiency for individuals with disabilities with earnings over $40,000 per year.

Discussion: As described in the priority, NIDRR is interested in research that focuses on the barriers to, and facilitators of, economic self-sufficiency among low- to moderate-income individuals with disabilities. Each applicant is permitted to define the term ''low- to moderate-income'' in a way that reflects the needs and circumstances of the population of individuals with disabilities that the applicant is targeting. Thus, the applicant could propose a project that focuses on the barriers to, and facilitators of, economic self sufficiency for individuals with disabilities who have earnings of over $40,000 per year. However, NIDRR does not have a sufficient basis for requiring all applicants to propose such a focus. The peer review panel will evaluate the merits of each proposal under this priority.

Changes: None.

Comment: One commenter suggested that the DRRP funded under this priority examine the outcomes of individuals with disabilities who participate in tax and financial service asset building programs and that the priority be revised to decrease the emphasis on generating new knowledge about individual-level characteristics associated with savings and asset accumulation.

Discussion: NIDRR agrees that the DRRP under this priority should focus on the effect of individual participation in asset accumulation programs and has provided for such a focus under paragraph (b) of the priority. That said, in order for these asset accumulation programs to be targeted appropriately in the future, the DRRP also must generate new knowledge about individual-level characteristics associated with savings and asset accumulation, as described in paragraph (a) of the priority. Accordingly, under the priority, applicants may propose to examine the outcomes of individuals with disabilities who participate in tax and financial service asset building programs, but, if they do so, they must also design their projects to generate new knowledge about individual-level characteristics associated with savings and asset accumulation.

Changes: None.

Comment: Three commenters suggested that by limiting the number of asset accumulation interventions to be developed and tested to two in paragraph (b) of the priority, NIDRR would preclude the DRRP funded under this priority from focusing on complex interventions that include more than

two strategies to promote asset accumulation.

Discussion: NIDRR has limited the number of asset accumulation interventions in this priority to help ensure the feasibility and quality of the proposed projects and to increase the likelihood of achieving planned outcomes. This pragmatic limitation does not preclude developing and testing one or two complex, well-defined interventions that include multiple asset accumulation strategies. The peer review panel will evaluate the merits of the proposals received under this priority.

Changes: None.

Priority 8—Technology Access in Resource-Limited Environments (Proposed Priority 9)

Comment: One commenter expressed concern that the term ''technology transfer,'' as used in this priority, is not consistent with the standard usage of that term. The commenter explained that ''technology transfer'' typically refers to the process of translating research into products and devices, or to the process of moving products from the prototype stage to commercialization.

Discussion: As described in the *Background* statement of this priority in the NPP, the purpose of this priority is to focus on the need for research to determine effective methods of designing, developing, and manufacturing low-cost, high-quality products and distributing them and providing information regarding them to individuals in resource-limited environments. In the proposed priority, the term ''technology transfer'' appeared only in the title of the priority. In order to avoid confusion among potential applicants and more accurately convey the purpose of this priority, NIDRR is changing the title of the priority.

Changes: NIDRR has changed the title of this priority to ''Technology Access in Resource-Limited Environments.''

Comment: One commenter asked whether the term ''resource-limited environments'' includes urban, inner city areas in the United States (U.S.) or in developing countries.

Discussion: As used in this priority, NIDRR intends the term ''resource-limited environments'' to include resource-limited environments in rural areas as well as urban, inner city areas in the U.S. and in developing countries. While NIDRR is particularly interested in research to promote the effective provision of technology to individuals with disabilities engaged in agricultural occupations, nothing in this priority precludes a grantee from focusing its research on increasing access to and awareness of technology products in resource-limited urban areas in the U.S., developing countries, or both.

Changes: None.

Comment: One commenter requested clarification on whether the focus of the priority is to improve conditions for people with disabilities in the U.S. or in developing countries.

Discussion: Our intent is to permit grantees under this priority to focus on resource-limited environments in the U.S., in developing countries, or both. Paragraph (b) of the priority states that applicants can focus their proposals on improving the availability of technology for individuals with disabilities in resource-limited environments in the U.S., in developing countries, or both. We recognize that in the proposed priority, paragraph (a) stated that applicants must focus their work either in the United States or abroad. We will change this paragraph to clarify that an applicant's work may be focused on the United States, developing countries, or both.

Changes: We have revised paragraph (a) of the priority to clarify that the DRRP can focus on resource-limited environments in the U.S., in developing countries, or both.

Priority 9—Research and Knowledge Translation Center for Individuals With Disabilities and Their Families (Proposed Priority 10)

Comment: Forty commenters suggested that the DRRP funded under this priority be required to examine the needs of people with disabilities and their families relative to education, employment, income support, and cash transfer programs.

Discussion: NIDRR agrees that employment and education are critical in the lives of individuals with disabilities and their families, and that income support and cash transfer programs are relevant to many of these individuals. Nothing in the priority precludes an applicant from proposing research in these specific areas. However, NIDRR does not have a sufficient basis for requiring all applicants to focus on these areas. The peer review panel will evaluate the merits of each proposal under this priority.

Changes: None.

Comment: Forty commenters requested that the priority clarify whether the term ''children,'' as used in the priority, includes individuals who are 21 years old or younger. The commenters noted that the term should include those children because many individuals with disabilities are eligible for special education services through age 21.

Discussion: NIDRR agrees that the age range for the term ''child'' as used in this priority should be consistent with the age range in the Individuals With Disabilities Education Act (IDEA). Although the age range for special education services under IDEA differs between States, children with disabilities generally are eligible for services under IDEA through age 21.

Changes: NIDRR has revised the priority to clarify that the DRRP funded under the priority must focus on the knowledge needs of families that include a child aged 21 or younger with a disability, or an adult with a disability who is a parent of at least one child aged 21 or younger.

Comment: One commenter suggested that the DRRP funded under this priority be required to examine the needs of people with disabilities and their families who require behavioral and mental health services.

Discussion: NIDRR recognizes that behavioral and mental health programs are often important to individuals with disabilities and their families. Paragraph (a) of the priority includes a short, but not exhaustive, list of programs and service systems that may be important to the community integration and participation of individuals with disabilities and includes ''a wide variety of related social support services.'' Applicants could propose research to identify the experiences and needs of individuals with disabilities who need access to behavioral and mental health programs. However, NIDRR does not have a sufficient basis for requiring all applicants to do so. The peer review panel will evaluate the merits of each proposal under this priority.

Changes: None.

Comment: Forty-two commenters requested that the outcome in paragraph (b) of the priority be expanded to include work that promotes improved participation and community integration of families of individuals with disabilities—not just individuals with disabilities.

Discussion: NIDRR's mission is to generate new knowledge and promote its effective use to improve levels of community participation and integration by individuals with disabilities. Paragraph (b) of the priority requires the DRRP funded under the priority to target its training, technical assistance, and informational resources to the specific knowledge needs of individuals with disabilities and their families. The aim of providing these services to both individuals with disabilities and their families is

ultimately to improve the participation and community integration of the individuals with disabilities. Efforts that focus on participation and integration of the families themselves, while a worthy undertaking, are beyond the intended scope of this priority. Therefore, NIDRR declines to expand the scope of the priority as requested by the commenters.

Changes: None.

Comment: Forty-one commenters asked that this priority be revised so that it generates research and new knowledge that are cross-disability in nature.

Discussion: We do not believe that a change is necessary because paragraph (a) of the priority specifically states that the experiences and knowledge needs of individuals with disabilities must be analyzed by condition type and severity of disability; we believe that this requirement necessitates that grantees take a cross-disability approach. To the extent that the knowledge needs determined under paragraph (a) of the priority differ by condition or severity of disability, training and technical assistance materials developed under paragraph (b) of the priority may need to be structured to meet the knowledge needs of specific subgroups of individuals with disabilities and their families. NIDRR intends for the training, technical assistance, and informational materials that are developed under this priority to be applicable to the needs of individuals with a wide range of conditions, as well as their families.

Changes: None.

Comment: One commenter noted that very little is known about the knowledge needs of people with disabilities and their families across the lifespan and across disability categories. This commenter suggested that the DRRP funded under this priority be required to focus on generating new knowledge about the information needed by individuals with disabilities and their families across the lifespan and across disability categories.

Discussion: NIDRR agrees that little is currently known about the needs of individuals with disabilities and their families across the lifespan and across disability categories. We believe that paragraph (a) of this priority addresses this knowledge gap.

Changes: None.

Comment: One commenter argued that the delivery of research-based training, technical assistance, and informational resources under paragraph (b) of the priority is not likely to be effective, given that access to information about service systems is primarily determined at the local level.

Discussion: For multiple funding cycles, NIDRR has sponsored research on the experience of children with disabilities and their families, as well as on adults with disabilities who are parents. Knowledge generated by this research is directly relevant to many of the needs of individuals with disabilities and their families as they navigate a wide variety of programs and services at the local level. While NIDRR understands that the availability of information about these programs and services varies across locales, NIDRR believes that the current knowledge base is sufficiently well developed to be relevant to individuals with disabilities and their families, regardless of their local context.

Changes: None.

Comment: Two commenters stated that the DRRP funded under this priority should address specifically the needs of parents of individuals with developmental disabilities. Another commenter recommended that the DRRP address specifically the needs of parents who have disabilities.

Discussion: Nothing in this priority precludes applicants from proposing activities that address the needs of parents of individuals with developmental disabilities. Similarly, nothing in this priority precludes applicants from proposing activities that address the needs of parents with disabilities. NIDRR does not have a sufficient basis for requiring all applicants to focus on one of these specific areas. The peer review panel will evaluate the merits of each proposal under this priority.

Changes: None.

Comment: Two commenters stated that one DRRP could not address adequately the knowledge needs of children with disabilities and their families, as well as parents with disabilities and their families.

Discussion: NIDRR agrees with these commenters' suggestion that the DRRP funded under this priority may not be able to conduct research on, and provide training and technical assistance to, both parents with disabilities as well as children with disabilities and their families.

Changes: We have revised the priority to require a focus on either families that include a child with a disability aged 21 or younger or an adult with a disability who is a parent of at least one child aged 21 or younger, but not both.

Comment: One commenter suggested that the DRRP funded under this priority be required to focus on State and Federal policies because, according to the commenter, State and Federal policies and funding are critical to assuring and supporting access to the service systems available to individuals with disabilities and their families in the U.S.

Discussion: NIDRR acknowledges that a wide variety of State and Federal policies affect the lives of individuals with disabilities and their families. Under the priority, applicants can propose research to identify the experiences and knowledge needs of individuals with disabilities relative to State and Federal policies. However, NIDRR does not have a sufficient basis for requiring all applicants to do so. The peer review panel will evaluate the merits of each proposal under this priority.

Changes: None.

Comment: One commenter suggested that the priority allow research on the needs of families with children with developmental disabilities who have aged into adulthood.

Discussion: While NIDRR recognizes the needs of adults with developmental disabilities and their families, the DRRP funded under this priority is designed to build on the base of knowledge generated by the NIDRR-funded Center on Families of Children With Disabilities and Center for Parents With Disabilities. These centers focus on children with disabilities and their families, or on parents with disabilities and their families, respectively. In order to capitalize on the knowledge generated by these centers, NIDRR wants the work of the DRRP funded under this priority to focus on one of these critical populations. A focus on adults with disabilities who are not parents is therefore beyond the intended scope of this priority.

Changes: None.

RRTCs

Priority 10—General Rehabilitation Research and Training Center (RRTC) Requirements (Proposed Priority 11 in the NPP)

Comment: None.

Discussion: NIDRR believes that it is particularly important to disseminate the results of the research conducted by RRTCs to vocational rehabilitation and independent living service providers described in Title I and Title VII of the Rehabilitation Act of 1973, as amended. Upon further review of the RRTC requirements, therefore, NIDRR determined that it was appropriate to identify these types of service providers as examples of audiences to whom the results of the RRTC's research must be disseminated.

Changes: We have added vocational rehabilitation and independent living

service providers as specific audiences to receive dissemination materials that result from the research and related activities carried out by the RRTCs.

Priority 11—Personal Assistance Services (PAS) in the 21st Century (Proposed Priority 15)

Comment: None.

Discussion: Upon further review of this priority, we have determined that the priority did not sufficiently emphasize the relationship between PAS and the employment of individuals with disabilities. Accordingly, we have revised the priority to emphasize research on the relationship between PAS and employment of individuals with disabilities.

Changes: We have made minor changes throughout this priority to clarify that the grantee under this priority must examine, among other things, the use of PAS to support employment among individuals with disabilities.

Priority 14—Community Living and Employment for Individuals With Intellectual and Developmental Disabilities (Proposed Priority 21)

Comment: Fourteen commenters suggested adding a component to the priority that supports the development of personnel to provide direct supports to individuals with intellectual disabilities so they can live and work in the community.

Discussion: NIDRR recognizes the need to support research on personal assistance services and professionals who provide direct support to individuals with intellectual and developmental disabilities (ID/DD). A well-prepared and skilled workforce of direct support providers can provide much needed personalized services and support to individuals with ID/DD who seek meaningful employment and wish to participate more actively in the community. Further, research is needed to identify methods for training direct service providers so that these workers can facilitate positive educational and vocational outcomes for individuals with ID/DD. Therefore, we are revising this priority to include a component addressing the development of personnel providing support services to individuals with ID/DD.

Changes: NIDRR has added a paragraph to this priority that requires the development, evaluation, and dissemination of training materials to prepare direct support providers for individuals with ID/DD.

Comment: Two commenters requested adding an ID/DD policy research component to the priority.

Discussion: Applicants under this priority may propose research that focuses on ID/DD policies. However, NIDRR does not have a sufficient basis for requiring that all applicants focus on this particular area. The peer review panel will evaluate the merits of each proposal under this priority.

Changes: None.

Comment: One commenter suggested adding an advocacy and empowerment component to the priority.

Discussion: Applicants may propose to conduct research on advocacy and empowerment interventions under paragraph (c) of this priority. However, NIDRR does not have a sufficient basis for requiring that all applicants focus on this particular area. The peer review panel will evaluate the merits of each proposal under this priority.

Changes: None.

Comment: None.

Discussion: NIDRR wishes to highlight both access to employment and community living for individuals with disabilities in this priority. For this reason, NIDRR is changing the title and introductory paragraphs of this priority to specify that employment is a key outcome to be addressed by the interventions developed by the proposed Center.

Changes: NIDRR has changed the title of this priority to ''Community Living and Employment for Individuals With Intellectual and Developmental Disabilities.'' NIDRR also has added the word ''employment'' to the introductory paragraphs of the priority to emphasize that the RRTC funded under the priority must focus on interventions that support the employment of individuals with disabilities.

RERCs

General

Comment: Two commenters asked whether the Department has a mechanism for ensuring that RERCs comply with the NIDRR requirement that all RERCs collaborate with the Center on Knowledge Translation for Technology Transfer to develop a technology transfer plan (paragraph (6) of the RERC priorities).

Discussion: All RERCs must propose methods for collaborating with the Center on Knowledge Translation for Technology Transfer, as specified in paragraph (6) of the RERC priorities. The peer review panel will evaluate the merits of the proposals received under the RERC priorities. Once RERC awards are made, NIDRR staff will facilitate and promote collaborative relationships between the RERCs and the Center on Knowledge Translation for Technology Transfer to help ensure that this collaboration occurs.

Changes: None.

Priority 15—RERC for Hearing Enhancement (Proposed Priority 22)

Comment: One commenter stated that research is needed to improve and evaluate hearing enhancement technologies, particularly in the areas of sound suppression, compatibility standards, standards for measuring fidelity and distortion, user customization, built-in wireless receivers, hearing in noise, high frequencies in hearing aids, and designing for usability.

Discussion: NIDRR agrees that research on hearing enhancement technologies is necessary to improve outcomes for individuals with hearing loss.

Changes: NIDRR has revised the priority to include a research focus on improving the performance, usability, and accessibility of hearing enhancement technologies.

Comment: One commenter stated that research into aural rehabilitation and consumer education, including areas such as training for professionals, developing aural rehabilitation tools, and disseminating information to consumers, should be an important component of this priority.

Discussion: Nothing in the priority precludes applicants from proposing research on aural rehabilitation and consumer education. The priority specifically calls for the development and testing of innovative technologies, products, and tools, which could include aural rehabilitation tools. Likewise, nothing in the priority precludes applicants from proposing consumer education strategies, such as training, technical assistance, and dissemination methods, to address these areas. Under the priority, each RERC must target technical assistance and dissemination to a wide variety of relevant stakeholder groups, including consumers. The peer review panel will evaluate the merits of each proposal under this priority.

Changes: None.

Comment: None.

Discussion: NIDRR has determined that the term ''assistive technology,'' as used in the deaf and hard of hearing community, typically refers to assistive listening and alerting devices such as FM systems and flashing lights. In this priority, NIDRR intended to be more inclusive of all hearing enhancement technologies, including possible focus areas that include, but are not limited to, hearing aids and implants, as well as assistive listening and alerting devices.

Changes: NIDRR has deleted the word ''assistive'' from the priority, so that the phrase now reads ''hearing enhancement technologies.''

Priority 17—RERC for Prosthetics and Orthotics (Proposed Priority 24)

Comment: One commenter suggested that the Prosthetics and Orthotics priority be revised to require grantees to conduct an independent evaluation of commercially available prosthetic and orthotic components.

Discussion: Nothing in the priority precludes applicants from proposing to conduct an independent evaluation of commercially available prosthetic and orthotic components. However, NIDRR does not have a sufficient basis for requiring that all applicants propose such evaluations. The peer review panel will evaluate the merits of each proposal under this priority.

Changes: None.

Comment: One commenter noted that orthotic research and development have historically received less attention than that of prosthetics. This commenter suggested that the Prosthetics and Orthotics priority be revised to require an appropriate focus on both prosthetics and orthotics.

Discussion The Prosthetics and Orthotics priority requires research and development in both disciplines. NIDRR has not prescribed a particular amount of resources that this RERC must devote to either discipline. The relative amount of focus on prosthetics and orthotics will be determined by the applicants. The peer review process will evaluate the merits of the proposals received under this priority.

Changes: None.

Priority 19—RERC for Universal Interface and Information Technology Access (Proposed Priority 26)

Comment: None.

Discussion: Upon further internal review of this priority, NIDRR noticed that we mistakenly referred to a NIDRR-funded Information Technology Technical Assistance Center. We intend for the RERC for Universal Interface and Information Technology Access to work collaboratively with the RERC on Telecommunication Access and the RERC on Mobile Wireless Technologies.

Changes: We deleted the reference to the NIDRR-funded Information Technology Technical Assistance Center from this priority.

Note: This notice does not solicit applications. In any year in which we choose to use one or more of these final priorities, we invite applications through a notice in the **Federal Register**. When inviting applications, we designate each priority as absolute, competitive preference, or invitational.

The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive preference priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive preference priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

This NFP is in concert with President George W. Bush's New Freedom Initiative (NFI) and NIDRR's Final Long-Range Plan for FY 2005–2009 (Plan). The NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/infocus/newfreedom.*

The Plan, which was published in the **Federal Register** on February 15, 2006 (71 FR 8165), can be accessed on the Internet at the following site: *http://www.ed.gov/about/offices/list/osers/nidrr/policy.html.*

Through the implementation of the NFI and the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) identify best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

Priorities:

Disability and Rehabilitation Research Projects (DRRP) Program

The purpose of the DRRP program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended, by developing methods, procedures, and rehabilitation technologies that advance a wide range of independent living and employment outcomes for individuals with disabilities, especially individuals with the most severe disabilities. DRRPs carry out one or more of the following types of activities, as specified and defined in 34 CFR 350.13 through 350.19: research, development, demonstration, training, dissemination, utilization, and technical assistance. An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement are found in 34 CFR 350.40(b). In addition, NIDRR intends to require all DRRP applicants to meet the *General Disability and Rehabilitation Research Projects (DRRP) Requirements* priority that it published in a notice of final priorities in the **Federal Register** on April 28, 2006 (71 FR 25472).

Additional information on the DRRP program can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#DRRP.*

Priority 1—Health Care Coordination for Individuals With Physical Disabilities

Priority:

The Assistant Secretary for Special Education and Rehabilitative Services establishes a priority for a Disability and Rehabilitation Research Project (DRRP) on Health Care Coordination for Individuals with Disabilities. The purpose of this priority is to conduct research on the outcomes of Medicare- or Medicaid-managed health care coordination programs for individuals with disabilities. Under this priority, the DRRP must be designed to contribute to the following outcomes:

(a) New knowledge about the extent to which enrollment in health care coordination programs enhances access to health care for individuals with disabilities. The DRRP must contribute to this outcome by conducting research on, and evaluating, one or more existing Medicaid- or Medicare-funded managed health care coordination programs for individuals with disabilities.

(b) New knowledge about the health outcomes associated with participation in health care coordination programs for individuals with disabilities. The DRRP must contribute to this outcome by conducting research on, and evaluating, one or more existing Medicaid- or Medicare-funded health care coordination programs for individuals with disabilities.

(c) New knowledge about potential Medicaid or Medicare cost savings that are associated with health care coordination efforts for individuals with disabilities. The DRRP must contribute

to this outcome by conducting research on, and evaluating, one or more existing Medicaid- or Medicare-funded health care coordination programs for individuals with disabilities.

In addition, the DRRP must work with the NIDRR project officer to coordinate its research efforts with the Centers for Medicare & Medicaid Services—Office of Research, Development, and Information.

Priority 2—Health and Health Care Disparities Among Individuals With Disabilities

Priority:

The Assistant Secretary for Special Education and Rehabilitative Services establishes a priority for a Disability and Rehabilitation Research Project (DRRP) on Health and Health Care Disparities Among Individuals with Disabilities. The purpose of this priority is to build a knowledge base about health care access and health outcomes among the diverse population of individuals with disabilities. Under this priority, the DRRP must be designed to contribute to the following outcomes:

(a) A foundation of available knowledge about health disparities among subpopulations of individuals with disabilities. The DRRP must contribute to this outcome by conducting a review and synthesis of existing research on health and health care access among individuals with disabilities or subgroups of individuals with disabilities. The DRRP must then use this review and synthesis to inform the subsequent research and evaluation efforts of the DRRP.

(b) New knowledge about system-level factors that are associated with the health of individuals with disabilities and their access to health care. The DRRP must contribute to this outcome by conducting research on the extent to which the health of individuals with disabilities and their access to health care are related to system-level factors that may include, but are not limited to, rural or urban status, as well as characteristics of their health care insurance or health care providers.

(c) New knowledge about the individual-level characteristics of individuals with disabilities that are associated with their health and access to health care. The DRRP must contribute to this outcome by conducting research on the extent to which the health of individuals with disabilities and their access to health care are related to their disabling condition categories (mental illness, sensory, physical, cognitive, or combinations thereof), disability severity, age, gender, race, ethnicity, socioeconomic status, education level, or other individual-level characteristics.

(d) Improved policies, programs, or interventions that promote the health and health care access among subpopulations of individuals with disabilities who are least likely to receive recommended health care services. The DRRP must contribute to this outcome by applying knowledge derived from research conducted under paragraphs (a), (b), and (c) of this priority.

In addition, the DRRP must collaborate with the Rehabilitation Research and Training Center on Health and Wellness, and other projects identified through consultation with the NIDRR project officer.

Priority 3—Traumatic Brain Injury Model Systems (TBIMS) Centers Collaborative Research Projects

Priority:

The Assistant Secretary for Special Education and Rehabilitative Services establishes a priority for Disability and Rehabilitation Research Projects (DRRPs) on Traumatic Brain Injury Model Systems (TBIMS) Collaborative Projects. Each DRRP under this priority must conduct research that contributes to evidence-based rehabilitation interventions, including, but not limited to, medical, psychological, vocational, and social interventions for the purpose of improving the lives of individuals with traumatic brain injury (TBI).

To be eligible under this priority, an applicant must be currently funded under NIDRR's TBIMS program.

Under this priority, each DRRP must be designed to contribute to the following outcomes:

(a) Increased use of the TBIMS program to conduct high-quality collaborative research. The DRRP must contribute to this outcome by collaborating with three or more of the NIDRR-funded TBIMS centers (for a minimum of four TBIMS sites).

Note: Applicants under this priority may propose to include other TBI research sites that are not participating in a NIDRR-funded TBIMS program in their collaborative research projects.

(b) Improved long-term outcomes for individuals with TBI. The DRRP must contribute to this outcome by using clearly identified research designs to conduct collaborative research on questions of significance to TBI rehabilitation. The DRRP's research must focus on one or more specific domains identified in NIDRR's Final Long-Range Plan for FY 2005–2009, including health and function, participation and community living, technology, and employment, and must be designed to ensure that the research study has appropriate research hypotheses and methods to generate reliable and valid findings.

In addition, the DRRP must address the following requirements:

- Demonstrate the capacity to carry out collaborative, multi-site research projects, including the ability to coordinate research among centers; maintain data quality; and adhere to research protocols, confidentiality requirements, and data safety requirements.
- Coordinate with the NIDRR-funded Model Systems Knowledge Translation Center to provide scientific results and information for dissemination to clinical and consumer audiences, including vocational rehabilitation and independent living service providers. (Additional information on this center can be found at *http://uwctds.washington.edu/projects/msktc.asp).*

Priority 4—Classification and Measurement of Medical Rehabilitation Interventions

Priority:

The Assistant Secretary for Special Education and Rehabilitative Services establishes a priority for a Disability and Rehabilitation Research Project (DRRP) on Classification and Measurement of Medical Rehabilitation Interventions. This DRRP must conduct research and development toward the creation of a taxonomy of medical rehabilitation interventions. Under this priority, the DRRP must be designed to contribute to the following outcomes:

(a) Enhanced research capacity and improved clinical practice in the field of medical rehabilitation. The DRRP must contribute to this outcome by conducting research to develop validated methods for systematically classifying the broad range of medical rehabilitation interventions delivered by rehabilitation physicians, physical therapists, occupational therapists, speech language pathologists, rehabilitation nurses, rehabilitation psychologists, and other allied health professionals.

(b) Enhanced research capacity and improved clinical practice in the field of medical rehabilitation through the application of one or more treatment theories to guide the development of a rehabilitation treatment taxonomy.

(c) Collaboration with relevant NIDRR-sponsored projects, such as the Rehabilitation Research Training Center on Measuring Rehabilitation Outcomes, and other projects as identified through

consultation with the NIDRR project officer.

Priority 5—Vocational Rehabilitation Service Models for Individuals With Autism Spectrum Disorders

Priority:

The Assistant Secretary for Special Education and Rehabilitative Services establishes a priority for a Disability and Rehabilitation Research Project (DRRP) on Vocational Rehabilitation Service Models for Individuals with Autism Spectrum Disorders (ASDs). This DRRP must conduct research on vocational rehabilitation (VR) service models for individuals with ASDs that contributes to evidence-based rehabilitation interventions to improve the lives of individuals with ASDs. Under this priority, the DRRP must be designed to contribute to one or both of the following outcomes:

(a) Improved vocational and postsecondary education outcomes for individuals with ASDs. The DRRP must contribute to this outcome by developing or testing VR intervention strategies for individuals with ASDs, the measures needed to assess the effectiveness of VR intervention strategies for individuals with ASDs, or both.

(b) Improved long-term vocational and postsecondary education services for individuals with ASDs. The DRRP must contribute to this outcome by analyzing the factors affecting the organization and delivery of these services to individuals with ASDs and by recommending changes that could improve these service delivery mechanisms.

Priority 6—Center on Knowledge Translation for Technology Transfer

Priority:

The Assistant Secretary for Special Education and Rehabilitative Services establishes a priority for a Disability and Rehabilitation Research Project to serve as the Center on Knowledge Translation for Technology Transfer (Center). The Center must conduct rigorous research, development, technical assistance, dissemination, and utilization activities to increase successful knowledge translation (KT) for the transfer of assistive technology products developed by NIDRR-funded technology grantees.

The Center must partner with key stakeholders such as trade and professional associations, and relevant industry representatives and focus its original research and development activities (i.e., those activities conducted pursuant to paragraphs (a)(2), (b)(2), and (b)(3) of the priority) on no more than three technology areas that are the focus of current NIDRR technology grantees. Information on technology research funded by NIDRR can be found at *http://www.naric.com/research/pd/priority.cfm.* Each applicant must define and justify its focus. The Center's identification and compilation of existing research on technology transfer pursuant to paragraphs (a)(1) and (b)(1) of the priority must be designed to serve as a knowledge base for the training and technical assistance the Center must provide to NIDRR technology grantees.

Under this priority, the Center must be designed to contribute to the following outcomes:

(a) Improved understanding of barriers to, and facilitators of, successful KT for technology transfer in different industries related to NIDRR's technology portfolio. The Center must contribute to this outcome by—

(1) Identifying and compiling existing research-based knowledge about barriers to, and facilitators of, successful KT for technology transfer; and

(2) Conducting research on barriers to, and facilitators of, successful KT for technology transfer related to the technology areas on which the Center focuses.

(b) Advanced knowledge of best practices in KT for technology transfer. The Center must contribute to this outcome by—

(1) Identifying existing models, methods, or measures of KT for technology transfer in different industries related to NIDRR's technology portfolio;

(2) Further developing and testing models, methods, or measures in the technology areas on which the Center focuses; and

(3) Establishing best technology transfer practices that can be used to effectively implement and evaluate the success of technology transfer activities in the technology areas on which the Center focuses.

(c) Increased utilization of the validated best practices for KT for technology transfer. The Center must contribute to this outcome by providing training and technical assistance to NIDRR-funded technology grantees to implement and evaluate the success of such practices.

Priority 7—Asset Accumulation and Economic Self-Sufficiency for Individuals With Disabilities

Priority:

The Assistant Secretary for Special Education and Rehabilitative Services establishes a priority for a Disability and Rehabilitation Research Project (DRRP) on Asset Accumulation and Economic Self-Sufficiency for Individuals with Disabilities. This DRRP must create new research-based knowledge to promote asset accumulation among individuals with disabilities. Under this priority, the DRRP must be designed to contribute to the following outcomes:

(a) New knowledge of both the barriers to, and facilitators of, asset accumulation and economic self-sufficiency for low-to moderate-income individuals with disabilities and their families. This DRRP must contribute to this outcome by focusing on individual-level characteristics that may affect savings and asset accumulation, as well as system-level factors that include policies or programs designed to create system-level incentives or disincentives to the accumulation of assets.

(b) Improved asset accumulation outcomes and economic self-sufficiency among individuals with disabilities. The DRRP must contribute to this outcome by developing and testing no more than two interventions that capitalize on the facilitators of asset accumulation and economic self-sufficiency and address the barriers to asset accumulation described in paragraph (a) of this priority. These interventions may include tailoring existing asset accumulation interventions to the specific needs and circumstances of individuals with disabilities.

Priority 8—Technology Access in Resource-Limited Environments

Priority:

The Assistant Secretary for Special Education and Rehabilitative Services establishes a priority for a Disability and Rehabilitation Research Project (DRRP) on Technology Access in Resource-Limited Environments. Under this priority, the DRRP must be designed to contribute to the following outcomes:

(a) Increased access to, and acquisition of, high-quality, low-cost technology products by individuals with disabilities who need them. The DRRP must contribute to this outcome by conducting research to evaluate the application of various models of transferring technology products to individuals with disabilities in resource-limited environments in the United States (U.S.), developing countries, or both. The DRRP's research must examine the relationship of factors such as type of technology, delivery system options, socioeconomic conditions, and disability type, on the successful transfer of needed technologies to individuals with disabilities. NIDRR is particularly concerned about providing technology to support individuals engaged in agricultural occupations because of the

significant need for assistive technologies by this population.

(b) Increased awareness by individuals with disabilities of high-quality, low-cost technology products, already developed or in development, for use in resource-limited environments. The DRRP must contribute to this outcome by conducting research on methods of providing information on available products to individuals with disabilities and their caregivers in resource-limited environments in the U.S., developing countries, or both. The DRRP's research must examine the effect of factors, such as literacy rates and the availability of print, Internet, or other communication resources, as well as socioeconomic factors and disability type, on strategies to increase awareness among individuals with disabilities in these areas.

Priority 9—Research and Knowledge Translation Center for Individuals With Disabilities and Their Families

Priority:

The Assistant Secretary for Special Education and Rehabilitative Services establishes a priority for a Disability and Rehabilitation Research Project (DRRP) to serve as the Research and Knowledge Translation Center for Individuals with Disabilities and Their Families (Center). The Center must conduct research on the experiences and knowledge needs of individuals with disabilities and their families, and translate these findings into training, technical assistance, and informational resources.

The Center must focus on the knowledge needs of families that include a child aged 21 or younger with a disability, or an adult with a disability who is a parent of at least one child aged 21 or younger.

Under this priority, the Center must be designed to contribute to the following outcomes:

(a) Increased knowledge about the experiences and information needs of individuals with disabilities and their families, and how those experiences and needs differ by variables such as condition type, severity, and age, as well as key characteristics of other family members and the overall structure of the family. The Center must contribute to this outcome by synthesizing existing research and advancing the knowledge base through the collection and analysis of data about the experiences and knowledge needs of families that include one or more individuals with a disability. Through this research and analysis, the Center must examine the extent to which the needs of individuals with disabilities and their families are being met by the programs and service systems that are critical to their community integration and participation (e.g., legal systems related to custody, adoption, and divorce; health care; long-term care; assistive technology provision programs; child care; transportation; and a wide variety of related social support services).

(b) Improved participation and community integration of individuals with disabilities. The Center must contribute to this outcome by developing, implementing, and evaluating research-based training, technical assistance, and informational resources that are targeted to the specific knowledge needs of individuals with disabilities and their families, as those needs are identified through the research activities described in paragraph (a) of this priority, or other research-based knowledge.

In addition, the Center must coordinate with relevant NIDRR Knowledge Translation grantees to develop and implement a method for identifying high-quality, research-based information for dissemination to individuals with disabilities and their families.

Rehabilitation Research and Training Centers (RRTCs)

The purpose of the RRTC program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended, through advanced research, training, technical assistance, and dissemination activities in general problem areas, as specified by NIDRR. Such activities are designed to benefit rehabilitation service providers, individuals with disabilities, and the family members or other authorized representatives of individuals with disabilities. Additional information on the RRTC program can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#RRTC*.

Statutory and Regulatory Requirements of RRTCs

RRTCs must—

- Carry out coordinated advanced programs of rehabilitation research;
- Provide training, including graduate, pre-service, and in-service training, to help rehabilitation personnel more effectively provide rehabilitation services to individuals with disabilities;
- Provide technical assistance to individuals with disabilities, their representatives, providers, and other interested parties;
- Demonstrate in their applications how they will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds;
- Disseminate informational materials to individuals with disabilities, their representatives, providers, and other interested parties; and
- Serve as centers of national excellence in rehabilitation research for individuals with disabilities, their representatives, providers, and other interested parties.

Priority 10—General Rehabilitation Research and Training Center (RRTC) Requirements

Priority:

To meet this priority, the RRTC must—

(a) Conduct a state-of-the-science conference on its respective area of research by the fourth year of the grant cycle and publish a comprehensive report on the final outcomes of the conference by the end of the fourth year of the grant cycle. This conference must include materials from experts internal and external to the RRTC;

(b) Coordinate on research projects of mutual interest with relevant NIDRR-funded projects, as identified through consultation with the NIDRR project officer;

(c) Involve individuals with disabilities in planning and implementing its research, training, and dissemination activities, and in evaluating the RRTC; and

(d) Coordinate with the appropriate NIDRR-funded Knowledge Translation Centers and professional and consumer organizations, to disseminate scientific results and information to policymakers, service providers, researchers, and others, including vocational rehabilitation and independent living center providers.

Priority 11—Personal Assistance Services (PAS) in the 21st Century

Priority:

The Assistant Secretary for Special Education and Rehabilitative Services establishes a priority for a Rehabilitation Research and Training Center (RRTC) on Personal Assistance Services (PAS) in the 21st Century. This RRTC must conduct rigorous research, develop interventions, and provide training that address future demands for PAS and caregiving. Under this priority, the RRTC must be designed to contribute to the following outcomes:

(a) Improved access to PAS by individuals with disabilities. The RRTC must contribute to this outcome by: (1) analyzing and describing trends and needs of the population of PAS consumers, including individuals with disabilities who require PAS in the

workplace; (2) identifying gaps in programs and services; (3) developing effective evidence-based interventions to address unmet needs for PAS; and (4) proposing strategies to coordinate and secure PAS services during national or regional emergencies.

(b) A larger and better prepared paid and unpaid PAS workforce to support individuals with disabilities, including those who are employed or seeking employment. The RRTC must contribute to this outcome by: (1) Developing tools and supports for unpaid caregivers that reflect the changing needs of caregivers as they age; (2) developing strategies that lead to a PAS workforce that is geographically diverse and that maximizes workforce recruitment, retention, compensation and benefits, professional training, development, and networking; and (3) identifying and evaluating interventions and labor resources, such as job training services, that help to improve workforce capacity of PAS providers.

(c) An understanding of the complexity of the economics of PAS. The RRTC must contribute to this outcome by: (1) Analyzing the interrelationships among employment, employment supports, the use of technologies, and PAS; and (2) analyzing the role of tax laws that affect reimbursement for PAS.

Priority 12—Disability Statistics and Demographics

Priority:

The Assistant Secretary for Special Education and Rehabilitative Services establishes a priority for a Rehabilitation Research and Training Center (RRTC) on Disability Statistics and Demographics. This RRTC must conduct rigorous research, knowledge translation, training, dissemination, and technical assistance that advance the use of rigorous disability statistics and demographics to inform disability policy and service provision. Under this priority, the RRTC must be designed to contribute to the following outcomes:

(a) Rigorous and timely demographic research to inform the development of disability policies and programs. The RRTC must contribute to this outcome by: (1) Producing meta-analyses of national, State, and administrative data that address critical program and service needs; and (2) providing statistical consultation, including specialized analyses, to facilitate the use of survey and administrative data by policymakers and others.

(b) Improved disability data and statistics. The RRTC must conduct research about methodologies that advance the practice for (1) conducting surveys of individuals with disabilities, including individuals with low-prevalence disabilities; (2) analyzing data about low-incidence populations of individuals with disabilities; and (3) other issues related to survey or administrative data.

(c) Effective use of disability statistics and demographic information. The RRTC must contribute to this outcome by: (1) Serving as a resource on disability statistics and demographics for Federal and other government agencies, policymakers, consumers, advocates, researchers, and others; and (2) transferring research findings to Federal and other government agencies, policymakers, consumers, advocates, researchers, and others to enhance planning, policymaking, program administration, and delivery of services to individuals with disabilities.

Priority 13—Health and Function Across the Lifespan of Individuals With Intellectual and Developmental Disabilities

Priority:

The Assistant Secretary for Special Education and Rehabilitative Services establishes a priority for a Rehabilitation Research and Training Center (RRTC) on Health and Function Across the Lifespan of Individuals with Intellectual and Developmental Disabilities (ID/DD). This RRTC must focus on rigorous research, training, technical assistance, and dissemination of strategies and interventions that improve the health and function of individuals with ID/DD, and access to community-based health and social services by individuals with ID/DD. The research conducted by this RRTC also must focus on promoting family and caregiver supports that enable individuals with ID/DD to receive long-term care.

When applying for a grant under this priority, an applicant must identify, in its application, the target population from the diverse population of individuals with ID/DD to be served by the proposed research and describe how the proposed research will benefit this group.

Under this priority, the RRTC must be designed to contribute to the following outcomes:

(a) Conceptually-sound theories and methodologies for research on community-based rehabilitation and health and social service provision, including research on long-term care or care provided by family members to individuals with ID/DD. The RRTC must contribute to this outcome by investigating existing theories that may help organize or frame research on ID/DD, including theories from fields such as long-term care, or frameworks related to delivery of rehabilitation or health services in the community.

(b) Improved instruments and measures that evaluate the suitability and quality of personal assistance services, and the effectiveness and efficiency of community-based health and social services for individuals with ID/DD. The RRTC must contribute to this outcome by assessing current measures and instruments, reporting on their validity and reliability, and then developing and testing improved measures.

(c) Improved rehabilitation or community-based interventions that demonstrate measurable reductions in barriers to access to and utilization of community-based services or community-based interventions that otherwise contribute to improved health and function of individuals with ID/DD. The RRTC must contribute to this outcome by identifying and testing potential interventions and providing a thorough assessment of the basis on which these interventions were selected, including any preliminary evidence of their usefulness and relevance to individuals with ID/DD and their families.

Priority 14—Community Living and Employment for Individuals With Intellectual and Developmental Disabilities

Priorities:

The Assistant Secretary for Special Education and Rehabilitative Services establishes a priority for a Rehabilitation Research and Training Center (RRTC) for Community Living and Employment for Individuals with Intellectual and Developmental Disabilities (ID/DD). The RRTC must focus on rigorous research, training, technical assistance, and dissemination to enhance inclusion and self-determination of individuals with ID/DD. This RRTC also must focus on developing interventions that support self-determination, informed choice, consumer control, employment, family involvement, and participation and community living of individuals with ID/DD.

When applying for a grant under this priority, an applicant must identify, in its application, the target population of interest from the diverse population of individuals with ID/DD to be served by the proposed research and describe how the proposed research will benefit this group.

Under this priority, the RRTC must be designed to contribute to the following outcomes:

(a) Improved concepts and theories of societal participation and community

living, and self-determination to guide the study of the needs and abilities of individuals with ID/DD. The RRTC must contribute to this outcome by investigating existing theories of societal participation, community living, and self-determination to frame research on these topics for individuals with ID/DD.

(b) Improved instruments and measures of participation and community living to assess the type, frequency, and quality of activities that individuals with ID/DD wish to engage in, or are able to engage in, outside the home or residential facility. The RRTC must contribute to this outcome by assessing current measures and instruments used to determine outcomes in the areas of access to community facilities, social participation, self advocacy, employment choice, and housing selection by individuals with ID/DD; reporting on the validity and reliability of these measures; and then developing and testing improved measures, as needed.

(c) Improved rehabilitation or community-based interventions that demonstrate a measurable impact in areas such as access to communal facilities and events, social participation and interaction with members of the community, self-advocacy, employment, and housing choices. The RRTC must contribute to this outcome by identifying and testing potential interventions for individuals with ID/DD, providing a thorough assessment of the basis on which these interventions were selected, and identifying any preliminary evidence of their usefulness and relevance to individuals with ID/DD and their families.

(d) Improved personal assistance services and direct support for individuals with ID/DD living in the community, including services and supports in educational, vocational training, and employment settings. The RRTC must contribute to this outcome by developing, evaluating, and disseminating training modules or programs that are intended to prepare direct support providers for individuals with ID/DD.

Rehabilitation Engineering Research Centers Program (RERCs)

Purpose of Program: The purpose of the RERC program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended, by conducting advanced engineering research and development on innovative technologies that are designed to solve particular rehabilitation problems, or remove environmental barriers. RERCs also demonstrate and evaluate such technologies, facilitate service delivery system changes, stimulate the production and distribution of new technologies and equipment in the private sector, and provide training opportunities.

General Requirements of RERCs

RERCs carry out research or demonstration activities in support of the Rehabilitation Act of 1973, as amended, by—

- Developing and disseminating innovative methods of applying advanced technology, scientific achievement, and psychological and social knowledge to: (a) Solve rehabilitation problems and remove environmental barriers; and (b) study and evaluate new or emerging technologies, products, or environments and their effectiveness and benefits; or

- Demonstrating and disseminating: (a) innovative models for the delivery of cost-effective rehabilitation technology services to rural and urban areas; and (b) other scientific research to assist in meeting the employment and independent living needs of individuals with severe disabilities; and

- Facilitating service delivery systems change through: (a) The development, evaluation, and dissemination of innovative consumer-responsive and individual- and family-centered models for the delivery to both rural and urban areas of innovative cost-effective rehabilitation technology services; and (b) other scientific research to assist in meeting the employment and independence needs of individuals with severe disabilities.

Each RERC must be operated by, or in collaboration with, one or more institutions of higher education or one or more nonprofit organizations.

Each RERC must provide training opportunities, in conjunction with institutions of higher education or nonprofit organizations, to assist individuals, including individuals with disabilities, to become rehabilitation technology researchers and practitioners.

Additional information on the RERC program can be found at: *http://www.ed.gov/rschstat/research/pubs/index.html.*

Priorities 15, 16, 17, 18, 19, and 20—Rehabilitation Engineering Research Centers (RERCs) for Hearing Enhancement (Priority 15), Accessible Public Transportation (Priority 16), Prosthetics and Orthotics (Priority 17), Communication Enhancement (Priority 18), Universal Interface and Information Technology Access (Priority 19), and Wheeled Mobility (Priority 20)

Priorities:

The Assistant Secretary for Special Education and Rehabilitative Services establishes the following priorities for (a) an RERC for Hearing Enhancement (priority 15); (b) an RERC for Accessible Public Transportation (priority 16); (c) an RERC for Prosthetics and Orthotics (priority 17); (d) an RERC for Communication Enhancement (priority 18); (e) an RERC for Universal Interface and Information Technology Access (priority 19); and (f) an RERC for Wheeled Mobility (priority 20). Within its designated priority research area, each RERC will focus on innovative technologies, new knowledge, and concepts that will improve the lives of individuals with disabilities.

(a) *RERC for Hearing Enhancement (Priority 15).* Under this priority, the RERC must research and develop methods, systems, and technologies that will: (1) Improve the performance, usability, and accessibility of hearing enhancement technologies (e.g., hearing aids, ear molds, assistive devices, implants); and (2) assist hearing professionals with the process of matching hearing enhancement technologies to individuals with hearing loss and associated conditions such as tinnitus. This includes improving the compatibility of hearing enhancement technologies with various environments such as school, work, recreation, and social settings.

(b) *RERC for Accessible Public Transportation (Priority 16).* Under this priority, the RERC must research and develop methods, systems, and devices that will promote and enhance the ability of individuals with disabilities to safely, comfortably, and efficiently identify destination information, board and disembark, and use services and facilities on various types of public transportation systems such as buses, passenger trains, and airplanes. This RERC must emphasize the principles of universal design in its product research and development.

(c) *RERC for Prosthetics and Orthotics (Priority 17).* Under this priority, the RERC must increase the understanding of the scientific and engineering principles pertaining to human locomotion, reaching, grasping, and

manipulation, and incorporate those principles into the design and fitting of prosthetic and orthotic devices.

(d) *RERC for Communication Enhancement (Priority 18).* Under this priority, the RERC must research and develop augmentative and alternative communication technologies and strategies that will enhance the communicative capacity of individuals of all ages with significant communication disorders across environments (*i.e.*, education, employment, recreation, social environments).

(e) *RERC for Universal Interface and Information Technology Access (Priority 19).* Under this priority, the RERC must research and develop innovative technological solutions for, and promote universal access to, current and emerging information technologies and technology interfaces that promote a seamless integration of the multiple technologies used by individuals with disabilities in the home, community, and workplace. This RERC must work collaboratively with the RERC on Telecommunication Access, and the RERC on Mobile Wireless Technologies.

(f) *RERC for Wheeled Mobility (Priority 20).* Under this priority, the RERC must research and develop innovative technologies and strategies that will improve the current state of the science, design standards, and usability of wheeled mobility devices and wheelchair seating systems.

Under each priority, the RERC must be designed to contribute to the following outcomes:

(1) Increased technical and scientific knowledge relevant to its designated priority research area. The RERC must contribute to this outcome by conducting high-quality, rigorous research and development projects.

(2) Innovative technologies, products, environments, performance guidelines, and monitoring and assessment tools as applicable to its designated priority research area. The RERC must contribute to this outcome through the development and testing of these innovations.

(3) Improved research capacity in its designated priority research area. The RERC must contribute to this outcome by collaborating with the relevant industry and professional associations, and institutions of higher education.

(4) Improved focus on cutting edge developments in technologies within its designated priority research area. The RERC must contribute to this outcome by identifying and communicating with NIDRR and the field regarding trends and evolving product concepts related to its designated priority research area.

(5) Increased impact of research in the designated priority research area. The RERC must contribute to this outcome by providing technical assistance to public and private organizations, individuals with disabilities, and employers on policies, guidelines, and standards related to its designated priority research area.

(6) Increased transfer of RERC-developed technologies to the marketplace. The RERC must contribute to this outcome by developing and implementing a plan for ensuring that all technologies developed by the RERC are made available to the public. The technology transfer plan must be developed in the first year of the project period in consultation with the NIDRR-funded Disability Rehabilitation Research Project, Center on Knowledge Translation for Technology Transfer.

In addition, under each priority, the RERC must—

- Design, build, and test prototype devices and assist in the transfer of successful solutions to relevant production and service delivery settings;
- Evaluate the efficacy and safety of its new products, instrumentation, or assistive devices;
- Provide as part of its proposal, and then implement, a plan that describes how it will include, as appropriate, individuals with disabilities or their representatives in all phases of its activities, including research, development, training, dissemination, and evaluation;
- Provide as part of its proposal, and then implement, in consultation with the NIDRR-funded National Center for the Dissemination of Disability Research (NCDDR) (*http://www.ncddr.org*), a plan to disseminate its research results to individuals with disabilities, their representatives, disability organizations, employers, service providers, professional journals, manufacturers, and other interested parties;
- Conduct a state-of-the-science conference on its designated priority research area in the fourth year of the project period, and publish a comprehensive report on the final outcomes of the conference in the fifth year of the project period; and
- Coordinate research projects of mutual interest with relevant NIDRR-funded projects, as identified through consultation with the NIDRR project officer.

Executive Order 12866

This NFP has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with this NFP are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this NFP, we have determined that the benefits of the final priorities justify the costs.

Summary of Potential Costs and Benefits

The benefits of the Disability and Rehabilitation Research Projects and Centers Programs have been well established over the years in that similar projects have been completed successfully. These final priorities will generate new knowledge and technologies through research, development, dissemination, utilization, and technical assistance projects.

Another benefit of these final priorities is that the establishment of new DRRPs, new RRTCs, and new RERCs will support the President's NFI and will improve the lives of individuals with disabilities. The new DRRPs, RRTCs, and RERCs will generate, disseminate, and promote the use of new information that will improve the options for individuals with disabilities to perform regular activities in the community.

Applicable Program Regulations: 34 CFR part 350.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

(Catalog of Federal Domestic Assistance Numbers 84.133A Disability Rehabilitation Research Projects, 84.133B Rehabilitation Research and Training Centers and 84.133E Rehabilitation Engineering Research Centers Program)

Program Authority: 29 U.S.C. 762(g), 764(a), 764(b)(2), and 764(b)(3).

Dated: January 29, 2008.

Tracy Justesen,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E8–1901 Filed 1–31–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education; Overview Information; Indian Education—Professional Development Grants; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2008

Catalog of Federal Domestic Assistance (CFDA) Number: 84.299B.

DATES: *Applications Available:* February 4, 2008.

Deadline for Transmittal of Applications: March 4, 2008.

Deadline for Intergovernmental Review: May 5, 2008.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Professional Development program is to (1) increase the number of qualified Indian individuals in professions that serve Indians; (2) provide training to qualified Indian individuals to become teachers, administrators, teacher aides, social workers, and ancillary educational personnel; and (3) improve the skills of qualified Indian individuals who serve in the education field. Activities may include, but are not limited to, continuing programs, symposia, workshops, conferences, and direct financial support.

Priorities: This competition contains two absolute priorities and two competitive preference priorities. In accordance with 34 CFR 75.105(b)(2)(ii), these priorities are from the regulations for this program (34 CFR 263.5(c)(1) and (2)).

Absolute Priorities: For FY 2008, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), we consider only applications that meet one or both of the following priorities.

These priorities are:

Absolute Priority One—Pre-Service Training for Teachers

A project that provides support and training to Indian individuals in completing a pre-service education program that enables these individuals to meet the requirements for full State certification or licensure as a teacher through—

(i) Training that leads to a bachelor's degree in education before the end of the award period; or

(ii) For States allowing a degree in a specific subject area, training that leads to a bachelor's degree in the subject area so long as the training meets the requirements for full State teacher certification or licensure; or

(iii) Training in a current or new specialized teaching assignment that requires at least a bachelor's degree and in which a documented teacher shortage exists; and

(iv) One-year induction services after graduation, certification, or licensure, provided during the award period to graduates of the pre-service program while they are completing their first year of work in schools with significant Indian student populations.

Note: In working with various institutions of higher education and State certification/licensure requirements, we have found that States requiring a degree in a specific subject area (e.g., specialty areas or teaching at the secondary level) generally require a master's degree or fifth-year requirement before an individual can be certified or licensed as a teacher. These students would be eligible to participate as long as their training meets the requirements for full State certification or licensure as a teacher.

Note: The degree received as a result of training and the one year of induction services are to be completed prior to the end of the award period in order to meet the requirements of this priority.

Absolute Priority Two—Pre-Service Administrator Training

A project that provides—

(1) Support and training to Indian individuals to complete a master's degree in education administration that is provided before the end of the award period and that allows participants to meet the requirements for State certification or licensure as an education administrator; and

(2) One year of induction services, during the award period, to participants after graduation, certification, or licensure, while they are completing their first year of work as administrators in schools with significant Indian student populations.

Note: The degree received as a result of training and the one year of induction services are to be completed prior to the end of the award period in order to meet the requirements of this priority.

Competitive Preference Priorities: For FY 2008, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we award up to an additional 10 points to an application, depending on how well the application meets one or both of these priorities.

These priorities are:

Competitive Preference Priority One

We award five points to an application submitted by an Indian tribe, Indian organization, or Indian institution of higher education that is eligible to participate in the Professional Development program. A consortium application of eligible entities that meets the requirements of 34 CFR 75.127 through 75.129 of EDGAR and includes an Indian tribe, Indian organization, or Indian institution of higher education will be considered eligible to receive the five competitive preference points. The consortium agreement, signed by all parties, must be submitted with the application in order to be considered a consortium application.

Competitive Preference Priority Two

We award five points to an application submitted by a consortium of eligible applicants that includes a tribal college or university and that designates that tribal college or university as the fiscal agent for the application. The consortium application of eligible entities must meet the requirements of 34 CFR 75.127 through 75.129 of EDGAR to be eligible to receive the five competitive preference points. These points are in addition to the five competitive preference points that may be awarded under Competitive Preference Priority One. The consortium agreement, signed by all parties, must be submitted with the application in order to be considered a consortium application.

Note: A consortium application must include a consortium agreement, signed by all parties, submitted with the application. Letters of support do *not* meet the requirement for a consortium agreement.

Note: Tribal colleges and universities are those Indian institutions of higher education cited in section 532 of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note), any other institution that qualifies for funding under the Tribally Controlled College or University Assistance Act of 1978 (25 U.S.C. 1801 *et seq.*), or Dine College (formerly Navajo Community College), authorized in the Navajo Community College Assistance Act of 1978 (25 U.S.C. 640a *et seq.*).

Program Authority: 20 U.S.C. 7442.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98 and 99. (b) The regulations for this program in 34 CFR part 263.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $2,017,000.

Estimated Range of Awards: $125,000–$400,000.

Estimated Average Size of Awards: $336,000.

Maximum Award: We will reject any application that proposes a budget exceeding $400,000 for the first, second, or third 12-month budget periods. The last 12-month budget period of a 48-month award will be limited to induction services only, at a cost not to exceed $90,000. The Assistant Secretary for Elementary and Secondary Education may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 6.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

III. Eligibility Information

1. *Eligible Applicants:* Eligible applicants for this program are institutions of higher education, including Indian institutions of higher education; State educational agencies (SEAs) or local educational agencies (LEAs) in consortium with an institution of higher education; Indian tribes or organizations in consortium with an institution of higher education; and Bureau of Indian Education funded schools in consortium with an institution of higher education. LEAs include charter schools that are considered LEAs under State law.

An application from a consortium of eligible entities must meet the requirements of 34 CFR 75.127 through 75.129. An application from a consortium of eligible entities must submit a consortium agreement, signed by all parties, with the application. Letters of support do *not* meet the requirement for a consortium agreement.

In order to be considered an eligible entity, applicants, including institutions of higher education, must be eligible to provide the level and type of degree proposed in the application or must apply in a consortium with an institution of higher education that is eligible to grant the target degree.

Applicants applying in consortium with or as an ''Indian organization'' must demonstrate eligibility by showing how the ''Indian organization'' meets all requirements of 34 CFR 263.3.

The term ''Indian institution of higher education'' means an accredited college or university within the United States cited in section 532 of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note), any other institution that qualifies for funding under the Tribally Controlled College or University Assistance Act of 1978 (25 U.S.C. 1801 *et seq.*), and Dine College (formerly Navajo Community College), authorized in the Navajo Community College Assistance Act of 1978 (25 U.S.C. 640a *et seq.*).

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Other:* Projects funded under this competition must plan to budget for a two-day Project Directors' meeting in Washington, DC during each year of the project period.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.*

To obtain a copy from ED Pubs, write, fax, or call the following: Education Publications Center, P.O. Box 1398, Jessup, MD 20794–1398. Telephone, toll free: 1–877–433–7827. Fax: (301) 470–1244.

If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.ed.gov/pubs/edpubs.html* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this program or competition as follows: CFDA number 299B.

Individuals with disabilities can obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Alternative Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative (Part III) to no more than 35 pages, using the following standards:

- A page is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the résumés, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if you exceed the page limit; or if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: February 4, 2008.

Deadline for Transmittal of Applications: March 4, 2008.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other

requirements and limitations in this notice. Deadline for Intergovernmental Review: May 5, 2008.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

Stipends may be paid only to full-time students. For the payment of stipends to project participants being trained, the Secretary expects to set the stipend maximum at $1,800 per month for full-time students and provide for a $300 allowance per month per dependent during an academic term. The terms ''stipend,'' ''full-time student,'' and ''dependent allowance'' are defined in 34 CFR 263.3.

6. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications:*

Applications for grants under the Professional Development program, CFDA Number 84.299B must be submitted electronically using the Governmentwide Grants.gov apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for Professional Development grants at *http://www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.299, not 84.299B).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted, and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date and time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*
- To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf).* You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).
- You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date (with the exception of consortium agreements which must be submitted within the electronic application, if applicable).

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please

contact the Grants.gov Support Desk, toll-free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system; *and*
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Lana Shaughnessy, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5C152, Washington, DC 20202–6335. FAX: (202) 260–7779.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.299B), 400 Maryland Avenue, SW., Washington, DC 20202–4260; or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center, Stop 4260, Attention: (CFDA Number 84.299B), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.299B), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 263.6 and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved

application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The Secretary has established the following key performance measures for assessing the effectiveness of the Professional Development program: (1) The percentage of participants in administrator preparation projects who become principals, vice principals, or school administrators in LEAs that enroll five percent or more American Indian and Alaska Native students; (2) The percentage of participants in teacher preparation projects who become teachers in LEAs that enroll five percent or more American Indian and Alaska Native students; (3) The percentage of program participants who meet the definition of ''Highly Qualified'' in section 9101(23) of the ESEA; (4) The percentage of program participants who complete their service requirement on schedule; (5) The cost per individual who successfully completes an administrator preparation program, takes a position in a school district with at least five percent American Indian/Alaska Native enrollment, and completes the service requirement in a district; and (6) The cost per individual who successfully completes a teacher preparation program, takes a position in a school district with at least five percent American Indian/Alaska Native enrollment, and completes the service requirement in such a district.

We encourage applicants to demonstrate a strong capacity to provide reliable data on these measures in their responses to the selection criteria ''Quality of project services'' and ''Quality of the project evaluation.''

All grantees will be expected to submit, as part of their performance report, information with respect to these performance measures.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Lana Shaughnessy, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5C152, Washington, DC 20202–6335. Telephone: (202) 205–2528 or by e-mail: *Indian.education@ed.gov.*

If you use a TDD, you may call the FRS toll free at 1–800–877–8339.

VIII. Other Information

Alternative Format: Individuals with disabilities can obtain this document and a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: January 29, 2008.

Kerri L. Briggs,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. E8–1904 Filed 1–31–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information; Fund for the Improvement of Postsecondary Education (FIPSE)-Special Focus Competition: U.S.-Brazil Higher Education Consortia Program Notice Inviting Applications for New Awards for Fiscal Year (FY) 2008

Catalog of Federal Domestic Assistance (CFDA) Number: 84.116M.

DATES: *Applications Available:* February 1, 2008.

Deadline for Transmittal of Applications: April 17, 2008.

Deadline for Intergovernmental Review: June 16, 2008.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of this program is to provide grants or enter into cooperative agreements to improve postsecondary education opportunities by focusing on problem areas in postsecondary education, or approaches to improve postsecondary education.

Priority: Under this competition, we are particularly interested in applications that address the following priority.

Invitational Priority: For FY 2008, this priority is an invitational priority. Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

This priority encourages proposals designed to support the formation of educational consortia of United States (U.S.) and Brazilian institutions to support cooperation in the coordination of curricula, the exchange of students, and the opening of educational opportunities between the U.S. and Brazil. The invitational priority is issued in cooperation with Brazil. These awards support only the participation of U.S. institutions and students in these consortia. Brazilian institutions participating in any consortium proposal responding to the invitational priority may apply to the Coordination of Improvement of Personnel of Superior Level (CAPES), Brazilian Ministry of Education, for additional funding under a separate but parallel Brazilian competition.

Program Authority: 20 U.S.C. 1138–1138d.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $350,000.

Estimated Range of Awards: $25,000–$30,000 for the first year. $220,000 for the four-year duration of the grant.

Estimated Average Size of Awards: $220,000 for the four-year duration of the grant. $50,000 for the two-year complementary grants.

Note: Two-year complementary grants support activities that complement partnerships between or among U.S. and Brazilian colleges and universities. The objectives of these activities (which may receive up to two years of funding) support the extension of projects. These objectives are— (1) outreach to local or regional communities in both countries; (2) scale-up of current activities to include additional partners and organizations; and (3) the dissemination of project results. Proposed activities may be conducted by groups of institutions currently funded by the U.S.—Brazil Program or established partnerships not previously supported under the U.S.—Brazil Program.

Maximum Award: We will reject any application that proposes a budget exceeding $80,000 for a single budget period of 12 months. The Assistant Secretary for Postsecondary Education may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 12.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months for two-year complementary grants. Up to 48 months for four-year grants.

III. Eligibility Information

1. *Eligible Applicants:* IHEs or combinations of IHEs and other public and private nonprofit institutions and agencies.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* Sarah T. Beaton, Fund for the Improvement of Postsecondary Education, U.S. Department of Education, 1990 K Street, NW., room 6154, Washington, DC 20006–8544. Telephone: (202) 502–7621.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Alternative Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative (Part III) to the equivalent of no more than 20 pages (double spaced), using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section. You must include all of the application narrative in Part III.

We will reject your application if you apply these standards and exceed the page limit; or if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: February 1, 2008.

Deadline for Transmittal of Applications: April 17, 2008.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: June 16, 2008.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the U.S.-Brazil Higher Education Consortia Program, CFDA Number 84.116M, must be submitted electronically using the Governmentwide Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the U.S.-Brazil Higher Education Consortia Program at *http://www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.326, not 84.326A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically

through the site, as well as the hours of operation.

• Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date and time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf*.

• To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp)*. These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.gov RegistrationBrochure.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).

• You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues With the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; *and*

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Sarah T. Beaton, U.S. Department of Education, 1990 K Street, NW., room 6154, Washington, DC 20006–8544. FAX: (202) 502–7877.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.116M), 400 Maryland Avenue, SW., Washington, DC 20202–4260; or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center, Stop 4260, *Attention:* (CFDA Number 84.116M), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.116M), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 of EDGAR and are listed in the application package.

2. *Review and Selection Process:* An additional factor we consider in selecting an application for an award is whether the application demonstrates a bilateral, innovative U.S.-Brazilian approach to training and education.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section in this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), the following measures will be used by the Department in assessing the performance of the program:

(1) The percentage of FIPSE grantees reporting project dissemination to others; and

(2) The percentage of FIPSE projects reporting institutionalization on their home campuses.

If funded, you will be asked to collect and report data in your project's annual performance report (EDGAR, 34 CFR 75.590) on steps taken toward these goals. Consequently, applicants are advised to include these two indicators in conceptualizing the design, implementation and evaluation of the proposed project. Consideration of the two performance indicators is an important part of many of the review criteria. Thus, it is important to the success of your application that you include these indicators. Their measurement should be a part of the project evaluation plan, along with measures of your progress on the goals and objectives specific to your project.

VII. Agency Contact

For Further Information Contact: Sarah T. Beaton, Fund for the Improvement of Postsecondary Education, U.S.-Brazil Higher Education Consortia Program, 1990 K Street, NW., room 6154, Washington, DC 20006–8544. *Telephone:* (202) 502–7621.

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Alternative Format: Individuals with disabilities can obtain this document and a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under *For Further Information Contact* in section VII in this notice.

Electronic Access to This Document: You can view this document, as well as

all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: January 29, 2008.

Diane Auer Jones,

Assistant Secretary for Postsecondary Education.

[FR Doc. E8–1920 Filed 1–31–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information; Fund for the Improvement of Postsecondary Education; (FIPSE)—Special Focus Competition: European Union-United States Atlantis Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2008

Catalog of Federal Domestic Assistance (CFDA) Number: 84.116J.

DATES: *Applications Available:* February 1, 2008.

Deadline for Transmittal of Applications: April 2, 2008.

Deadline for Intergovernmental Review: June 2, 2008.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the program is to provide grants for or enter into cooperative agreements with eligible applicants to improve postsecondary education.

Priority: Under this competition, we are particularly interested in applications that address the following priority.

Invitational Priority: For FY 2008, this priority is an invitational priority. Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

This priority is designed to support the formation of educational consortia of American and European institutions to support cooperation in the coordination of curricula, the exchange of students, and the opening of educational opportunities between the United States (U.S.) and the European Union (EU). This priority relates to the purpose of the European Union-United States Atlantis (Atlantis) Program to develop and implement undergraduate joint or dual degree programs, or short-term exchange programs.

This invitational priority is established in cooperation with the EU. These awards support only the participation of U.S. institutions and students in these consortia. EU institutions participating in any consortium proposal responding to the invitational priority may apply to the Directorate-General for Education and Culture (DG EAC), European Commission for funding under a separate but parallel EU competition.

Program Authority: 20 U.S.C. 1138–1138d.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $1,400,000.

Estimated Range of Awards: $35,000–$112,000 for the first year only.

Estimated Average Size of Awards: $35,000 for a Policy Oriented Measures grant, $45,000 for a Mobility grant, and $112,000 for a Transatlantic Degree grant. You can find a detailed description of each of these three types of grants in the program guidelines in the application package for this competition.

Maximum Award: We will reject any application that proposes a budget exceeding $150,000 for a single budget period of 12 months. The Assistant Secretary for Postsecondary Education may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 14.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

III. Eligibility Information

1. *Eligible Applicants:* IHEs or combinations of IHEs and other public and private nonprofit institutions and agencies.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *http://www.grants.gov.* To obtain a copy from ED Pubs, write, fax, or call the following: Education Publications Center, P.O. Box 1398, Jessup, MD 20794–1398. Telephone, toll free: 1–877–433–7827. Fax: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.ed.gov/pubs/edpubs.html* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.116J.

Individuals with disabilities can obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the person or team listed under Alternative Format in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Word Limit and Application Format: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative (Part III) to no more than 6000 words. The page format for the application must comply with the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

• Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

• Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The 6000 word limit and the formatting standards do not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; the one-page abstract, the short bios, the bibliography, or the letters of commitment. However, the 6000 word limit does apply to all of the application narrative section. You must include all of the application narrative in Part III.

We will reject your application if you exceed the 6000 word limit.

3. *Submission Dates and Times:*

Applications Available: February 1, 2008.

Deadline for Transmittal of Applications: April 2, 2008.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: June 2, 2008.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. *Other Submission Requirements:*

Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Atlantis Program, CFDA Number 84.116J, must be submitted electronically using the Governmentwide Grants.gov apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Atlantis Program at *http://www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.116, not 84.116J).

Please note the following:

• When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted, and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date and time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*

• To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *www.Grants.gov/applicants/get_registered.jsp*). These steps include (1) Registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).

• You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any word-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact the person listed in section VII in this notice under **FOR FURTHER INFORMATION CONTACT** and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; *and*

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Frank Frankfort, U.S. Department of Education, 1990 K Street, NW., Room 6152, Washington, DC 20006–8544. Fax: (202) 502–7877.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.116J), 400 Maryland Avenue, SW., Washington, DC 20202–4260; or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center, Stop 4260, Attention: (CFDA Number 84.116J), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.116J), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under

which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210 of EDGAR and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section in this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html*.

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the following two measures will be used by the Department in assessing the performance of the FIPSE program as a whole:

(1) The percentage of FIPSE grantees who report project dissemination to others; and

(2) The percentage of FIPSE projects that report institutionalization on their home campuses.

In addition, the program has developed two performance measures specifically for the FIPSE European Union-United States Atlantis Program:

(1) The percentage of students pursuing a joint or dual degree who persist from one academic year to the next (persistence); and

(2) The percentage of students who graduate within the project's stated time for completing a joint or dual degree (graduation).

If funded, you will be asked to collect and report data in your project's annual performance report (EDGAR, 34 CFR 75.590) on the program's four measures. Consequently, applicants are advised to include these four measures in conceptualizing the design, implementation, and evaluation of their proposed projects. Consideration of the performance measures is an important part of many of the review criteria. Thus, it is important to the success of your application that you include these measures. These measures should be a part of the project evaluation plan, along with any measures of your progress on the goals and objectives that are specific to your project.

VII. Agency Contact

For Further Information Contact: Frank Frankfort, Fund for the Improvement of Postsecondary Education, European Union-United States Atlantis Program, 1990 K Street, NW., Room 6152, Washington, DC 20006–8544. Telephone: (202) 502–7513. The contact person does not mail application materials.

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Alternative Format: Individuals with disabilities can obtain this document and a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: January 29, 2008.

Diane Auer Jones,

Assistant Secretary for Postsecondary Education.

[FR Doc. E8–1918 Filed 1–31–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Rehabilitation Research and Training Centers (RRTCs)

Notice inviting applications for new awards for fiscal year (FY) 2008.

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.133B–1, 84.133B–3, 84.133B–4, and 84.133B–5.

Note: This notice invites applications for four separate competitions. For key dates, contact person information, and funding information regarding each of the four competitions, see the chart in the Award Information section of this notice.

DATES: *Applications Available:* See chart.

Deadline for Transmittal of Applications: See chart.

Date of Pre-Application Meeting: See chart.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the RRTC program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended, through advanced research, training, technical assistance, and dissemination activities in general problem areas, as specified by NIDRR. Such activities are designed to benefit rehabilitation service providers, individuals with disabilities, and the family members or other authorized representatives of individuals with disabilities.

Additional information on the RRTC program can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#RRTC.*

Priorities: NIDRR has established five separate priorities for the four competitions announced in this notice. *The General RRTC Requirements* priority, which applies to all RRTC competitions and the remaining four priorities announced in this notice, are from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register**.

Absolute Priorities: For FY 2008, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), for each competition (designated by CFDA number in the following chart), we consider only applications that meet both the *General RRTC Requirements* priority and the absolute priority designated for that competition.

Absolute Priority	*Corresponding Competition CFDA Number*
General RRTC Requirements	84.133B–1, 84.133B–3, 84.133B–4, 84.133B–5
Personal Assistance Services (PAS) in the 21st Century	84.133B–1
Disability Statistics and Demographics	84.133B–3
Health and Function Across the Lifespan of Individuals With Intellectual and Developmental Disabilities.	84.133B–4
Community Living and Employment for Individuals with Intellectual and Developmental Disabilities.	84.133B–5

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, and 97. (b) The regulations for this program in 34 CFR part 350. (c) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $7,650,000.

Estimated Range of Awards: See chart.

Maximum Award: See chart.

Estimated Number of Awards: See chart.

Project Period: See chart.

REHABILITATION RESEARCH AND TRAINING CENTERS APPLICATION NOTICE FOR FISCAL YEAR 2008

CFDA number and name	Applications available	Deadline for transmittal of applications	Date of pre-application meeting	Estimated range of awards	Estimated average size of awards	Maximum award *	Estimated number of awards	Project period	Contact person
84.133B–1 Personal Assistance Services (PAS) in the 21st Century.	02/01/08	04/01/08	02/27/08	$847,999–850,000	$848,999	$850,000 *	1	Up to 60 mos.	Donna Nangle, (202) 245–7462, Rm 6029.
84.133B–3 Disability Statistics and Demographics.	.....	.....	02/27/08	$847,999–850,000	848,999	850,000 *	1	Up to 60 mos.	
84.133B–4 Health and Function Across the Lifespan of Individuals With Intellectual and Developmental Disabilities.	.....	.....	02/20/08	$847,999–850,000	848,999	850,000 *	1	Up to 60 mos.	
84.133B–5 Community Living and Employment for Individuals with Intellectual and Developmental Disabilities.	.....	.....	02/20/08	$847,999–850,000	848,999	850,000 *	1	Up to 60 mos.	

*We will reject any application that proposes a budget exceeding the maximum award for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The Department is not bound by any estimates in this notice.

Note: The maximum amount includes direct and indirect costs. The maximum allowable indirect cost rate is 15 percent.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.*

To obtain a copy from ED Pubs, write, fax, or call the following: Education Publications Center, P.O. Box 1398, Jessup, MD 20794–1398. Telephone, toll free: 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.ed.gov/pubs/edpubs.html* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify the competition to which you want to apply, as follows: CFDA number 84.133B–1, 84.13B–3, 84.133B–4, or 84.133B–5.

Individuals with disabilities can obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Alternative Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning

the content of an application, together with the forms you must submit, are in the application package for each competition announced in this notice.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit Part III to the equivalent of no more than 125 pages for each competition, using the following standards:

• A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.

• Double space (no more than three lines per vertical inch) all text in the application narrative. Single spacing may be used for titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

• Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the application narrative section (Part III).

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (Standard Form 424); budget requirements (ED Form 524) and narrative justification; other required forms; an abstract, Human Subjects narrative, Part III narrative; resumes of staff; and other related materials, if applicable.

3. *Submission Dates and Times:*

Applications Available: See chart.

Deadline for Transmittal of Applications: See chart.

Pre-Application Meeting: Interested parties are invited to participate in any of the pre-application meetings held for the competitions announced in this notice and to receive information and technical assistance through individual consultation with NIDRR staff. The dates for each of the competitions' pre-application meetings are listed in the chart in the *Award Information* section in this notice. Interested parties may participate in these meetings on the dates listed in the chart by conference call with NIDRR staff from the Office of Special Education and Rehabilitative Services between 10 a.m. and 12 p.m., Washington, DC time. For each meeting, NIDRR staff also will be available from 1:30 p.m. to 3:30 p.m. on the same day, by telephone, to provide information and technical assistance through individual consultation. For further information or to make arrangements to participate in any of these meetings via conference call or for an individual consultation, contact Donna Nangle, U.S. Department of Education, Potomac Center Plaza (PCP), Room 6029, 550 12th Street, SW., Washington, DC 20202. Telephone: (202) 245–7462 or by e-mail: *Donna.Nangle@ed.gov.*

Applications for grants under this program may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery, please refer to section IV.6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This competition is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. *Other Submission Requirements:* Applications for grants under this program may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

To comply with the President's Management Agenda, we are participating as a partner in the Governmentwide Grants.gov Apply site. The Rehabilitation Research and Training Centers competitions, CFDA number 84.133B–1, 84.133B–3, 84.133B–4, or 84.133B–5, announced in this notice are included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Governmentwide Grants.gov Apply site at *http://www.Grants.gov*. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for the Rehabilitation Research and Training Centers competitions—CFDA number 84.133B–1, 84.133B–3, 84.133B–4, or 84.133B–5 at *http://www.Grants.gov*. You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.133, not 84.133B).

Please note the following:

• Your participation in Grants.gov is voluntary.

• When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date and time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for the competition to which you are applying to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*

• To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

• If you submit your application electronically, you must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).

• If you submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive an automatic notification of receipt from Grants.gov that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service:
U.S. Department of Education,
Application Control Center,
Attention: (CFDA number 84.133B–1, 84.133B–3, 84.133B–4, or 84.133B–5),
400 Maryland Avenue, SW.,
Washington, DC 20202–4260; or

By mail through a commercial carrier:
U.S. Department of Education,
Application Control Center, Stop 4260, Attention: (CFDA number 84.133B–1, 84.133B–3, 84.133B–4, or 84.133B–5), 7100 Old Landover Road,
Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA number 84.133B–1, 84.133B–3, 84.133B–4, or 84.133B–5), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand

deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 350.54 and are listed in the application package.

2. *Review and Selection Process:* Additional factors we consider in determining the merits of an application are as follows—

The Secretary is interested in outcomes-oriented research or development projects that use rigorous scientific methodologies. To address this interest, applicants are encouraged to articulate goals, objectives, and expected outcomes for the proposed research or development activities. Proposals should describe how results and planned outputs are expected to contribute to advances in knowledge, improvements in policy and practice, and public benefits for individuals with disabilities. Applicants should propose projects that are designed to be consistent with these goals. We encourage applicants to include in their application a description of how results will measure progress towards achievement of anticipated outcomes (including a discussion of the proposed measures of effectiveness), the mechanisms that will be used to evaluate outcomes associated with specific problems or issues, and how the proposed activities will support new intervention approaches and strategies. Submission of the information identified in this section V. 2.

Review and Selection Process is voluntary, except where required by the selection criteria listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notice (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section in this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html*.

Note: NIDRR will provide information by letter to grantees on how and when to submit the report.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through a review of grantee performance and products. Each year, NIDRR examines, a portion of its grantees to determine:

- The percentage of newly-awarded NIDRR projects that are conducting at least one multi-site, collaborative controlled trial of interventions and programs.
- The number of accomplishments (e.g., new or improved tools, methods, discoveries, standards, interventions, programs, or devices) developed or tested with NIDRR funding that have been judged by expert panels to be of high quality and to advance the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new grants that include studies funded by NIDRR that assess the effectiveness of interventions, programs, and devices using appropriate methods.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports (APRs) in support of these performance measures.

Updates on the Government Performance and Results Act of 1993 (GPRA) indicators, revisions and methods appear on the NIDRR Program Review Web site: *http://www.neweditions.net/pr/commonfiles/pmconcepts.htm*.

Grantees should consult these sites on a regular basis to obtain details and explanations on how NIDRR programs contribute to the advancement of the Department's long-term and annual performance goals.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 6029, PCP, Washington, DC 20202. Telephone: (202) 245–7462 or by e-mail: *Donna.Nangle@ed.gov*

If you use a TDD, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

VIII. Other Information

Alternative Format: Individuals with disabilities can obtain this document and a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll-free, at 1–800–877–8339.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *www.gpoaccess.gov/nara/index.html*.

Dated: January 29, 2008.

Tracy R. Justesen,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E8–1905 Filed 1–31–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Disability Rehabilitation Research Projects (DRRPs); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2008

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.133A–1, 84.133A–3, 84.133A–4, 84.133A–5, 84.133A–6, 84.133A–7, 84.133A–8, 84.133A–9, and 84.133A–10.

Note: This notice invites applications for nine separate competitions. For key dates, contact person information, and funding information regarding each of the nine competitions, see the chart in the *Award Information* section of this notice.

DATES: *Applications Available:* See chart.

Deadline for Transmittal of Applications: See chart.

Date of Pre-Application Meeting: See chart.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the DRRP program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended, by developing methods, procedures, and rehabilitation technologies that advance a wide range of independent living and employment outcomes for individuals with disabilities, especially individuals with the most severe disabilities. DRRPs carry out one or more of the following types of activities, as specified and defined in 34 CFR 350.13 through 350.19: research, development, demonstration, training, dissemination, utilization, and technical assistance.

An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement are found in 34 CFR 350.40(b).

Additional information on the DRRP program can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#DRRP*.

Priorities: NIDRR has established 10 separate priorities for the 9 competitions announced in this notice. The *General DRRP Requirements* priority, which applies to all DRRP competitions announced in this notice, is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published in the **Federal Register** on April 28, 2006 (71 FR 25472). The remaining nine priorities are from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register**.

Absolute Priorities: For FY 2008, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), for each competition (designated by CFDA number in the following chart), we consider only applications that meet both the *General DRRP Requirements* priority and the absolute priority designated for that competition.

These priorities are:

Absolute priority	Corresponding competition CFDA number
General DRRP Requirements	84.133A–1, 84.133A–3, 84.133A–4, 84.133A–5, 84.133A–6, 84.133A–7, 84.133A–8, 84.133A–9, and 84.133A–10
Health Care Coordination for Individuals with Physical Disabilities.	84.133A–1
Health and Health Care Disparities Among Individuals with Disabilities.	84.133A–3
Traumatic Brain Injury Model Systems (TBIMS) Centers Collaborative Research Projects.	84.133A–4
Classification and Measurement of Medical Rehabilitation Interventions.	84.133A–5
Vocational Rehabilitation Service Models for Individuals with Autism Spectrum Disorders.	84.133A–6
Center on Knowledge Translation for Technology Transfer.	84.133A–7
Asset Accumulation and Economic Self-Sufficiency for Individuals with Disabilities.	84.133A–8
Technology Access in Resource-Limited Environments	84.133A–9
Research and Knowledge Translation Center for Individuals with Disabilities and Their Families.	84.133A–10

Program Authority: 29 U.S.C. 762(g) and 764(a).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, and 97. (b) The regulations for this program in 34 CFR part 350. (c) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published in the **Federal Register** on April 28, 2006 (71 FR 25472). (d) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $8,876,00.

Estimated Range of Awards: See chart.

Maximum Award: See chart.

Estimated Number of Awards: See chart.

Project Period: See chart.

DISABILITY REHABILITATION RESEARCH PROJECTS APPLICATION NOTICE FOR FISCAL YEAR 2008

CFDA number and name	Applications available	Deadline for transmittal of applications	Date of pre-application meeting	Estimated range of awards	Estimated average size of awards	Maximum award*	Estimated number of awards	Project period	Contact person
84.133A–1 Health Care Coordination for Individuals With Physical Disabilities.	02/01/08	04/1/08	02/22/08	$289,999–300,000	$297,999	*$300,000	1	Up to 60 mos.	Donna Nangle, (202) 245–7462, Rm 6029.
84.133A–3 Health and Health Care Disparities Among Individuals With Disabilities.			02/22/08	447,999–450,000	448,999	*450,000	1	Up to 60 mos.	
84.133A–4 Traumatic Brain Injury Model Systems (TBIMS) Centers Collaborative Research Projects.			02/22/08	851,999–855,000	853,999	*855,000	2	Up to 60 mos.	
84.133A–5 Classification and Measurement of Medical Rehabilitation Interventions.			02/27/08	347,999–350,000	348,999	*350,000	1	Up to 60 mos.	
84.133A–6 Vocational Rehabilitation Service Models for Individuals With Autism Spectrum Disorders.			02/25/08	347,999–350,000	348,999	*350,000	1	Up to 60 mos.	
84.133A–7 Center on Knowledge Translation for Technology Transfer.			02/26/08	977,999–1,000,000	998,999	*1,000,000	1	Up to 60 mos.	
84.133A–8 Asset Accumulation and Economic Self-Sufficiency for Individuals With Disabilities.			02/25/08	297,999–300,000	298,999	*300,000	1	Up to 36 mos.	
84.133A–9 Technology Access in Resource-Limited Environments.			02/27/08	947,999–950,000	948,999	*950,000	1	Up to 60 mos.	
84.133A–10 Research and Knowledge Translation Center for Individuals With Disabilities and Their Families.			02/20/08	497,999–500,000	498,999	*500,000	1	Up to 36 mos.	

*We will reject any application that proposes a budget exceeding the maximum award for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the FEDERAL REGISTER.

Note: The Department is not bound by any estimates in this notice.

Note: The maximum amount includes direct and indirect costs.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* Cost sharing is required by 34 CFR 350.62 and will be negotiated at the time of the grant award.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html*.

To obtain a copy from ED Pubs, write, fax, or call the following: Education Publications Center, P.O. Box 1398, Jessup, MD 20794–1398. Telephone, toll free: 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.ed.gov/pubs/edpubs.html* or at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify the competition to which you want to apply, as follows: CFDA number 84.133A–1, 84.13A–3, 84.133A–4, 84.133A–5, 84.133A–6, 84.133A–7, 84.133A–8, 84.133A–9, or 84.133A–10.

Individuals with disabilities can obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Alternative Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for each competition announced in this notice.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit Part III to the equivalent of no more than 75 pages for each competition, with the exception of competitions 84.133A–4, 84.133A–7, and 84.133A–9, for which we recommend a page limit of 125 pages. In applying these page limits, use the following standards:

- A ''page'' is 8.5'' x 11'', on one side only, with 1'' margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative. Single spacing may be used for titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the application narrative section (Part III).

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (Standard Form 424); budget requirements (ED Form

524) and narrative justification; other required forms; an abstract, Human Subjects narrative, Part III narrative; resumes of staff; and other related materials, if applicable.

3. *Submission Dates and Times: Applications Available:* See chart.

Deadline for Transmittal of Applications: See chart.

Pre-Application Meeting: Interested parties are invited to participate in any of the pre-application meetings held for the competitions announced in this notice and to receive information and technical assistance through individual consultation with NIDRR staff. The dates for each of the competitions' pre-application meetings are listed in the chart in the *Award Information* section in this notice. Interested parties may participate in these meetings on the dates listed in the chart by conference call with NIDRR staff from the Office of Special Education and Rehabilitative Services between 1 p.m. and 3 p.m., Washington, DC time, with the exception of the pre-application meeting for the Traumatic Brain Injury Model Systems (TBIMS) Centers Collaborative Research Projects competition (84.133A–4), which will be held between 10 a.m. and 12 p.m., Washington, DC time. For each meeting, NIDRR staff also will be available from 3:30 p.m. to 4:30 p.m. on the same day, by telephone, to provide information and technical assistance through individual consultation. For further information or to make arrangements to participate in any of these meetings via conference call or for an individual consultation, contact Donna Nangle, U.S. Department of Education, Potomac Center Plaza (PCP), room 6029, 550 12th Street, SW., Washington, DC 20202. Telephone: (202) 245–7462 or by e-mail: *Donna.Nangle@ed.gov.*

Applications for grants under this program may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This competition is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. *Other Submission Requirements:* Applications for grants under this program may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

To comply with the President's Management Agenda, we are participating as a partner in the Governmentwide Grants.gov Apply site. The Disability Rehabilitation Research Projects competitions, CFDA number 84.133A–1, 84.133A–3, 84.133A–4, 84.133A–5, 84.133A–6, 84.133A–7, 84.133A–8, 84.133A–9, or 84.133A–10, announced in this notice are included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Governmentwide Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for the Disability Rehabilitation Research Projects competitions—CFDA number 84.133A–1, 84.133A–3, 84.133A–4, 84.133A–5, 84.133A–6, 84.133A–7, 84.133A–8, 84.133A–9, or 84.133A–10 at *http://www.Grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.133, not 84.133A).

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date and time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for the competition to which you are applying to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*
- To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.
- You will not receive additional point value because you submit your application in electronic format, nor

will we penalize you if you submit your application in paper format.

• If you submit your application electronically, you must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).

• If you submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues With the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. *Submission of paper applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA number 84.133A–1, 84.13A–3, 84.133A–4, 84.133A–5, 84.133A–6, 84.133A–7, 84.133A–8, 84.133A–9, or 84.133A–10), 400 Maryland Avenue, SW., Washington, DC 20202–4260; or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center, Stop 4260, Attention: (CFDA number 84.133A–1, 84.133A–3, 84.133A–4, 84.133A–5, 84.133A–6, 84.133A–7, 84.133A–8, 84.133A–9, or 84.133A–10), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education, Application Control Center, Attention: (CFDA number 84.133A–1, 84.13A–3, 84.133A–4, 84.133A–5, 84.133A–6, 84.133A–7, 84.133A–8, 84.133A–9, or 84.133A–10), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note: for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 350.54 and are listed in the application package.

2. *Review and Selection Process:* Additional factors we consider in determining the merits of an application are as follows—

The Secretary is interested in outcomes—oriented research or development projects that use rigorous scientific methodologies. To address this interest, applicants are encouraged to articulate goals, objectives, and expected outcomes for the proposed research or development activities. Proposals should describe how results and planned outputs are expected to contribute to advances in knowledge, improvements in policy and practice, and public benefits for individuals with disabilities. Applicants should propose projects that are designed to be consistent with these goals. We encourage applicants to include in their application a description of how results will measure progress towards achievement of anticipated outcomes (including a discussion of measures of effectiveness), the mechanisms that will be used to evaluate outcomes associated with specific problems or issues, and how the proposed activities will support new intervention approaches and strategies. Submission of the information identified in this section V. 2. *Review and Selection Process* is voluntary, except where required by the selection criteria listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notice (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable* Regulations section in this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

Note: NIDRR will provide information by letter to grantees on how and when to submit the report.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through review of grantee performance and products. Each year, NIDRR examines a portion of its grantees to determine:

- The percentage of newly-awarded NIDRR projects that are multi-site, collaborative, controlled studies of interventions and programs.
- The number of accomplishments (e.g., new or improved tools, methods, discoveries, standards, interventions, programs, or devices) developed or tested with NIDRR funding that have been judged by expert panels to be of high quality and to advance the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new grants that include studies funded by NIDRR that assess the effectiveness of interventions, programs, and devices using rigorous methods.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports (APRs) in support of these performance measures.

Updates on the Government Performance and Results Act of 1993 (GPRA) indicators, revisions, and methods appear on the NIDRR Program Review Web site: *http://www.neweditions.net/pr/commonfiles/pmconcepts.htm.*

Grantees should consult these sites on a regular basis to obtain details and explanations on how NIDRR programs contribute to the advancement of the Department's long-term and annual performance goals.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 6029, PCP, Washington, DC 20202. Telephone: (202) 245–7462 or by e-mail: *Donnna.Nangle@ed.gov.*

If you use a TDD, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

VIII. Other Information

Alternative Format: Individuals with disabilities can obtain this document and a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll-free, at 1–800–877–8339.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: January 29, 2008.

Tracy R. Justesen,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E8–1902 Filed 1–31–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Rehabilitation Engineering Research Centers (RERCs); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2008

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.133E–1, 84.133E–3, 84.133E–4, 84.133E–5, 84.133E–6, and 84.133E–7.

Note: This notice invites applications for six separate competitions. For key dates, contact person information, and funding information regarding each of the six competitions, see the chart in the *Award Information* section of this notice.

DATES: *Applications Available:* See chart.

Deadline for Transmittal of Applications: See chart.

Date of Pre-Application Meeting: See chart.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the RERC program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended, by conducting advanced engineering research and development on innovative technologies that are designed to solve particular rehabilitation problems, or remove environmental barriers. RERCs also demonstrate and evaluate such technologies, facilitate service delivery system changes, stimulate the production and distribution of new technologies and equipment in the private sector, and provide training opportunities.

Additional information on the RERC program can be found at: *http://www.ed.gov/rschstat/research/pubs/resprogram.html#RERC.*

Priorities: These priorities are from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register**. Each of the priorities announced in this notice corresponds to a separate competition as follows:

Absolute Priority	*Competition CFDA No.*
RERC for Hearing Enhancement	84.133E–1
RERC for Accessible Public Transportation	84.133E–3
RERC for Prosthetics and Orthotics	84.133E–4
RERC for Communication Enhancement	84.133E–5
RERC for Universal Interface and Information Technology Access	84.133E–6
RERC for Wheeled Mobility	84.133E–7

Absolute Priorities: For FY 2008, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), for each competition, we consider only applications that meet the absolute priority designated for that competition.

Program Authority: 29 U.S.C. 762(g) and 764(b)(3).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, and 97. (b) The regulations for this program in 34 CFR part 350. (c) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $6,650,000.

Estimated Range of Awards: See chart.

Maximum Award: See chart.

Estimated Number of Awards: See chart.

Project Period: See chart.

REHABILITATION ENGINEERING RESEARCH CENTER APPLICATION NOTICE FOR FISCAL YEAR 2008

CFDA number and name	Applications available	Deadline for transmittal of applications	Date of pre-application meeting	Estimated range of awards	Estimated average size of awards	Maximum award*	Estimated number of awards	Project period	Contact person
84.133E–1 RERC for Hearing Enhancement.	02/01/08	04/01/08	02/21/08	$947,999–$950,000	$948,999	* $950,000	1	Up to 60 mos.	Donna Nangle (202) 245–7462, Rm 6029
84.133E–3 RERC for Accessible Public Transportation.	.....	.....	02/21/08	$947,999–$950,000	$948,999	* $950,000	1	Up to 60 mos.	
84.133E–4 RERC for Prosthetics and Orthotics.	.....	.....	02/21/08	$947,999–$950,000	$948,999	$* 950,000	1	Up to 60 mos.	
84.133E–5 RERC for Communication Enhancement.	.....	.....	02/19/08	$947,999–$950,000	$948,999	* $950,000	1	Up to 60 mos.	
84.133E–6 RERC for Universal Interface and Information Technology Access.	.....	.....	02/19/08	$947,999–$950,000	$948,999	* $950,000	1	Up to 60 mos.	
84.133E–7 RERC for Wheeled Mobility.	.....	.....	02/19/08	$947,999–$950,000	$948,999	* $950,000	1	Up to 60 mos.	

* We will reject any application that proposes a budget exceeding the maximum award for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The Department is not bound by any estimates in this notice.

Note: The maximum amount includes direct and indirect costs.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.*

To obtain a copy from ED Pubs, write, fax, or call the following: Education Publications Center, P.O. Box 1398, Jessup, MD 20794–1398. Telephone, toll free: 1–877–433–7827. Fax: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.ed.gov/pubs/edpubs.html* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify the competition to which you want to apply, as follows: CFDA number 84.133E–1, 84.13E–3, 84.133E–4, 84.133E–5, 84.133E–6, or 84.133E–7.

Individuals with disabilities can obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Alternative Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for each competition announced in this notice.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit Part III to the equivalent of no more than 125 pages for each competition, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative. Single spacing may be used for titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the application narrative section (Part III).

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (Standard Form 424); budget requirements (ED Form 524) and narrative justification; other required forms; an abstract, Human Subjects narrative, Part III narrative; resumes of staff; and other related materials, if applicable.

3. *Submission Dates and Times:*

Applications Available: See chart.

Deadline for Transmittal of Applications: See chart.

Pre-Application Meeting: Interested parties are invited to participate in any of the pre-application meetings held for the competitions announced in this notice and to receive information and technical assistance through individual consultation with NIDRR staff. The dates for each of the competitions' pre-application meetings are listed in the chart in the *Award Information* section in this notice. Interested parties may participate in these meetings on the dates listed in the chart by conference call with NIDRR staff from the Office of Special Education and Rehabilitative Services between 1 p.m. and 3 p.m., Washington, DC time. For each meeting, NIDRR staff also will be available from 3:30 p.m. to 4:30 p.m. on the same day, by telephone, to provide information and technical assistance through individual consultation. For further information or to make arrangements to participate in any of these meetings via conference call or for an individual consultation, contact Donna Nangle, U.S. Department of Education, Potomac Center Plaza (PCP), Room 6029, 550 12th Street, SW., Washington, DC 20202. Telephone: (202) 245–7462 or by e-mail: *Donna.Nangle@ed.gov*.

Applications for grants under this program may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This competition is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. *Other Submission Requirements:* Applications for grants under this program may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

To comply with the President's Management Agenda, we are participating as a partner in the Governmentwide Grants.gov Apply site. The Rehabilitation Engineering Research Centers competitions, CFDA number 84.133E–1, 84.133E–3, 84.133E–4, 84.133E–5, 84.133E–6, or 84.133E–7, announced in this notice are included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Governmentwide Grants.gov Apply site at *http://www.Grants.gov*. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for the Rehabilitation Research and Training Centers competitions—CFDA number 84.133E–1, 84.133E–3, 84.133E–4, 84.133E–5, 84.133E–6, or 84.133E–7 at *http://www.Grants.gov*. You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.133, not 84.133E).

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date and time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for the competition to which you are applying to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf*.

• To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf)*. You also must provide on your application the same D-U-N-S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

• If you submit your application electronically, you must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).

• If you submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA number 84.133E–1, 84.133E–3, 84.133E–4, 84.133E–5, 84.133E–6, or 84.133E–7), 400 Maryland Avenue, SW., Washington, DC 20202–4260; or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center, Stop 4260, Attention: (CFDA number 84.133E–1, 84.133E–3, 84.133E–4, 84.133E–5, 84.133E–6, or 84.133E–7), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA number 84.133E–1, 84.133E–3, 84.133E–4, 84.133E–5, 84.133E–6, or 84.133E–7), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays. *Note for Mail or Hand Delivery of Paper Applications:* If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 350.54 and are listed in the application package.

2. *Review and Selection Process:* Additional factors we consider in determining the merits of an application are as follows—

The Secretary is interested in outcomes-oriented research or development projects that use rigorous scientific methodologies. To address this interest, applicants are encouraged to articulate goals, objectives, and expected outcomes for the proposed research or development activities. Proposals should describe how results and planned outputs are expected to contribute to advances in knowledge, improvements in policy and practice, and public benefits for individuals with disabilities. Applicants should propose projects that are designed to be consistent with these goals. We encourage applicants to include in their application a description of how results will measure progress towards achievement of anticipated outcomes (including a discussion of measures of effectiveness), the mechanisms that will be used to evaluate outcomes associated with specific problems or issues, and how the proposed activities will support new intervention approaches and strategies. Submission of the information identified in this section V. 2. *Review and Selection Process* is voluntary, except where required by the selection criteria listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notice (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section in this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

Note: NIDRR will provide information by letter to grantees on how and when to submit the report.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through review of grantee performance and products. Each year, NIDRR examines a portion of its grantees to determine:

- The percentage of newly-awarded NIDRR projects that are multi-site, collaborative, controlled studies of interventions and programs.
- The number of accomplishments (e.g., new or improved tools, methods, discoveries, standards, interventions, programs, or devices) developed or tested with NIDRR funding that have been judged by expert panels to be of high quality and to advance the field.
- The number of new or improved NIDRR-funded assistive and universally designed technologies, products, and devices transferred to industry for potential commercialization.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new grants that include studies funded by NIDRR that assess the effectiveness of interventions, programs, and devices using rigorous methods.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports (APRs) in support of these performance measures.

Updates on the Government Performance and Results Act of 1993 (GPRA) indicators, revisions, and methods appear on the NIDRR Program Review Web site: *http://www.neweditions.net/pr/commonfiles/pmconcepts.htm.*

Grantees should consult these sites on a regular basis to obtain details and explanations on how NIDRR programs contribute to the advancement of the Department's long-term and annual performance goals.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., Room 6029, PCP, Washington, DC 20202. Telephone: (202) 245–7462 or by e-mail: Donnna.Nangle@ed.gov.

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Alternative Format: Individuals with disabilities can obtain this document and a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll-free, at 1–800–877–8339.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: January 29, 2008.

Tracy R. Justesen,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E8–1907 Filed 1–31–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–332]

Application To Export Electric Energy; Nexen Marketing U.S.A. Inc.

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: Nexen Marketing U.S.A. Inc. (Nexen) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests, or requests to intervene must be submitted on or before March 3, 2008.

ADDRESSES: Comments, protests, or requests to intervene should be addressed as follows: Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, 20585–0350 (FAX 202–586–8008).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the FPA (16 U.S.C. 824a(e)).

On December 17, 2007, the Department of Energy (DOE) received an application from Nexen for authority to transmit electric energy from the United States to Canada as a power marketer. Nexen, a Delaware corporation with its principal place of business in Calgary, Alberta, Canada, has requested an electricity export authorization with a 5-year term. Nexen does not own or control any electric generation, transmission, or distribution assets within the United States, nor does it have a franchised service area in the United States. The electric energy which Nexen proposes to export to Canada would be surplus energy purchased from electric utilities, Federal power marketing agencies, and other entities within the United States.

Nexen will arrange for the delivery of exports to Canada over the international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Eastern Maine Electric Cooperative, International Transmission Co., Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power, Inc., Minnkota Power Cooperative, Inc., New York Power Authority, Niagara Mohawk Power Corp., Northern States Power Company, Vermont Electric Power Company, and Vermont Electric Transmission Co.

The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by Nexen has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters: Any person desiring to become a party to these proceedings or to be heard by filing comments or protests to this application should file a petition to intervene, comment, or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the Nexen application to export electric energy to Canada should be clearly marked with Docket No. EA–332. Additional copies are to be filed directly with Douglas F. John, John & Hengerer, 1730 Rhode Island Ave., NW., Suite 600, Washington, DC 20036–3116 and Diane Cameron, Director, Regulatory, Nexen Marketing U.S.A. INC., 801 7th Avenue, SW., Calgary, AB T2P 3P7 Canada.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://www.oe.energy.gov/permitting/electricity_imports_exports.htm*, or by e-mailing Odessa Hopkins at *Odessa.hopkins@hq.doe.gov.*

Issued in Washington, DC, on January 29, 2008.

Anthony J. Como,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. E8–1917 Filed 1–31–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–337]

Application To Export Electric Energy; Synergy Power Marketing, Inc.

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: Synergy Power Marketing, Inc. (Synergy) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests, or requests to intervene must be submitted on or before February 19, 2008.

ADDRESSES: Comments, protests, or requests to intervene should be addressed as follows: Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–586–8008).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the FPA (16 U.S.C. 824a(e)).

On January 28, 2008, the Department of Energy (DOE) received an application from Synergy for authority to transmit electric energy from the United States to Canada as a power marketer. Synergy, a power marketer with its principal place of business in Alberta, Canada, has requested an electricity export

authorization with a 5-year term. Synergy does not own or control any electric generation, transmission, or distribution assets, nor does it have a franchised service area. The electric energy which Synergy proposes to export to Canada would be surplus energy purchased from electric utilities, Federal power marketing agencies, and other entities within the United States.

Synergy requests that consideration of the application be expedited so that it may participate in the Alberta market that has recently experienced some supply uncertainty and price volatility. Specifically, Synergy requests that DOE rule on its application prior to March 1, 2008.

Synergy will arrange for the delivery of exports to Canada over the international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Eastern Maine Electric Cooperative, International Transmission Co., Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power, Inc., Minnkota Power Cooperative, Inc., New York Power Authority, Niagara Mohawk Power Corp., Northern States Power Company, Vermont Electric Power Company, and Vermont Electric Transmission Co.

The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by Synergy has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters: Any person desiring to become a party to these proceedings or to be heard by filing comments or protests to this application should file a petition to intervene, comment, or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

DOE has granted Synergy's request for expedited treatment of its application and shortened the public comment period to 15 days.

Comments on the Synergy application to export electric energy to Canada should be clearly marked with Docket No. EA–337. Additional copies are to be filed directly with Randall Dost, Sean Pinnell, Synergy Power Marketing, Inc., Ste 800, 2303 4th Street, Calgary, Alberta T2S 2S7 and Linda Williams, 518 Carolina Drive, Toccoa, GA 30577.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://www.oe.energy.gov/permitting/electricity_imports_exports.htm*, or by e-mailing Odessa Hopkins at *Odessa.hopkins@hq.doe.gov*.

Issued in Washington, DC, on January 29, 2008.

Anthony J. Como,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. E8–1916 Filed 1–31–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Notice of Opportunity for Technical Assistance (NOTA)—DE–PS36–08GO98011, Solar America Initiative (SAI) Market Transformation: Solar America Showcases, FY 2008

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

SUMMARY: The Department of Energy (DOE) is accepting requests for Technical Assistance for large-scale, high-visibility solar installation projects that have the ability to impact the market for solar technologies through large project size, use of a novel solar technology, and/or use of a novel application for a solar technology. In addition, it is desired that the project be replicable or have replicable components. It is not expected that all projects will meet all of these parameters, but projects would ideally reflect some or most of these qualities. Large-scale installations may include photovoltaic, concentrating solar power, solar water heating, and solar space heating applications. Technical assistance will not be provided for research, product development, or early stage testing and evaluation of any technology or product. Solar America Showcases focus on providing support to projects in which a commercially-ready technology is to be installed in a large-scale application with full financial project commitment already in place.

Any legal entity, to include private sector for-profit and non-profit organizations, State and local governments, and trade and other associations may request DOE Technical Assistance under this Notice, so long as the installation proposed by the organization, and for which the Technical Assistance will be provided, is located in the United States. Federal agencies are not permitted to request Technical Assistance under this Notice. Federally Funded Research and Development Center (FFRDC) Contractors may not submit a request for Technical Assistance, may not participate as a team partner with any entity requesting Technical Assistance, and may not assist any entity with their submission of a request for Technical Assistance under this Notice. Nonprofit organizations described in section 501(c)(4) of the Internal Revenue Code of 1986 that engaged in lobbying activities after December 31, 1995 are not permitted to submit a request for Technical Assistance under this Notice.

Technical Assistance described under this Notice will be provided via a Memorandum of Agreement (MOA) between DOE, the organization selected to receive the Technical Assistance, and the Technical Assistance Team Leader responsible for providing the Technical Assistance. A MOA is a collaborative agreement between the Federal Government and other parties to work together on a mutually beneficial activity. The MOA will detail the scope of the Technical Assistance activities, the forms of collaboration, the responsibilities of the partners to the Agreement, and the treatment of any potential intellectual property. Federal funding will not be provided to a partner under a MOA.

DATES: Requests for Technical Assistance must be submitted via the DOE Industry Interactive Procurement System (IIPS) Web site at *http://e-center.doe.gov/* by 03/12/2008 and 06/12/2008.

ADDRESSES: Note that this posting in the **Federal Register** is not the full announcement. Interested parties must download and follow the instructions in the full announcement which is available on the DOE Industry Interactive Procurement System (IIPS) website. To locate the full Announcement, go to *http://e-center.doe.gov/*, click on ''Browse Opportunities'', scroll down to view DOE Financial Assistance Opportunities (Viewing ''Opportunities by Contracting Activity'' is

recommended.) Click on the ''Browse Financial Asst.'' button. Click on the folder (or blue arrow depending on your server) next to the ''Golden Field Office''. Locate and click on Announcement No. DE–PS36–08GO98011, Solar America Initiative (SAI) Market Transformation: Solar America Showcases, FY2008. IMPORTANT: Scroll to the bottom of the page, where you will find the ''Full Announcement & Other Files.''

FOR FURTHER INFORMATION CONTACT: Questions regarding the content of the full announcement must be submitted through the ''Submit Question'' feature in the DOE Industry Interactive Procurement System (IIPS) at *http://e-center.doe.gov.* Locate the full announcement (as identified under ''Addresses'') and then click on the ''Submit Question'' button. Enter required information. You will receive an electronic notification that your question has been answered. DOE will try to respond to a question within 3 business days, unless a similar question and answer have already been posted on the website. All questions must be submitted no later than one week prior to the closing date. Please contact the IIPS Help Desk at 1–800–683–0751 (select Option 1) or at *helpdesk@pr.doe.gov* for questions regarding the operation of IIPS.

SUPPLEMENTARY INFORMATION: To provide more guidance as to the types of installations DOE is looking to support, additional information is provided below on the parameters for (and examples of) projects for which DOE anticipates receiving requests for Technical Assistance under this Notice.

Regarding the scale of the project, DOE is looking for projects with total capacity in excess of 100 kW. Projects may include multiple sites, and do not have to be co-located. In addition to the initial installation, the kW total may also include planned follow-on activities (direct replication efforts). Examples include installations in residential subdivisions, shopping centers, office buildings or parks, big box retail locations, factories, and utility solar production.

Regarding the visibility of the project, DOE anticipates projects that are centrally located in towns, are sited near highly trafficked vehicle or pedestrian areas, house hundreds of residents or workers, are a part of an area frequented by tourists, are part of a popular public destination (*e.g.* shopping centers, courthouses, etc.) or have some other high visibility component. The project would also have an outreach component that provides information about the installation.

Regarding the novel solar technology, DOE proposes to support projects that introduce new solar technologies that hold the promise of reducing initial costs, simplifying installation, and boosting consumer confidence, but which have little testing to date that demonstrates such improvements. Examples include new cell or module technology, new materials, or innovative installation and mounting techniques. By offering Technical Assistance, DOE envisions helping these new solar technologies develop a performance record in the marketplace, identify technical problems early in mass product releases, and devise solutions and alternatives that move specific solar technologies to cost-competitiveness by 2015.

Regarding the novel solar application, DOE expects to support projects that utilize solar technology in new ways. One example would be to include new methods of building integration beyond traditional roof-mounted modules. DOE also supports innovative designs and methods that open up previously untapped markets or end uses to solar technology adoption. Acceptable Solar Applications could also include those that are currently in use in other geographic areas, but not in the vicinity (State, region) of the proposed site.

Regarding replicability, DOE expects to support projects that can either be replicated by the entity requesting the Technical Assistance or by others. The entire project should be replicable, or have replicable components, unless installations are of an extremely large size that justifies DOE support without replicability. Replication of projects is a critical component to advance solar commercialization.

To improve the overall impact of the project, teaming by the entities requesting the Technical Assistance under this Notice with other relevant stakeholders is encouraged. DOE also encourages incorporating energy efficiency measures with solar technologies in all building/facility applications as part of the projects supported by this Technical Assistance. Technical assistance will not be provided for research, product development, or early stage testing and evaluation of any technology or product.

DOE will provide tailored hands-on Technical Assistance to the selected organization(s) through the use of specifically assembled Technical Assistance Teams. Members of these Teams will be subject matter and technical experts in areas such as, architecture, finance, planning, project management, etc. Significant participants of these Teams will be the National Renewable Energy Laboratory (NREL), Sandia National Laboratories (SNL), and the Southwest and Southeast Regional Experiment Stations (RESs), which are housed at New Mexico State University and Florida Solar Energy Center respectively. Other entities may be added to the teams as necessary. DOE may choose to contract for non-lab Technical Assistance Team members, mainly to provide the non-solar-specific Technical Assistance, through a separate procurement instrument.

Technical Assistance provided under this Notice is designed to help entities make informed decisions. Technical Assistance Teams will provide information and options to enable policy, planning, and purchasing decisions. DOE and the Technical Assistance Teams will not direct behavior or decisions, or require entities to take any particular course of action. The role of DOE stops short of the actual decision-making.

To learn more about the Solar America Initiative (SAI): *http://www1.eere.energy.gov/solar/solar_america/index.html.*

Issued in Golden, CO on January 15, 2008.

Mary Foreman,

Procurement Director, Golden Field Office.

[FR Doc. E8–1919 Filed 1–31–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

January 25, 2008.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG08–25–000.

Applicants: Buffalo Gap Wind Farm 3, LLC.

Description: Notice of Self-Certification as an Exempt Wholesale Generator of Buffalo Gap Wind Farm 3, LLC.

Filed Date: 12/20/2007.

Accession Number: 20071220–5003.

Comment Date: 5 p.m. Eastern Time on Friday, February 1, 2008.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER02–2458–011.

Applicants: Wolverine Power Supply Cooperative, Inc.,Midwest Independent Transmission System.

Description: Errata to Refund Report in Midwest Independent Transmission System Operator, Inc.
Filed Date: 01/17/2008.
Accession Number: 20080117–5009.
Comment Date: 5 p.m. Eastern Time on Thursday, February 7, 2008.

Docket Numbers: ER03–534–006.
Applicants: Ingenco Wholesale Power, LLC.
Description: Notice of Non-Material Change in Status of Ingenco Wholesale Power, LLC.
Filed Date: 01/18/2008.
Accession Number: 20080118–5036.
Comment Date: 5 p.m. Eastern Time on Friday, February 8, 2008.

Docket Numbers: ER05–6–101; EL04–135–104; EL02–111–121; EL03–212–117.
Applicants: Midwest Independent Transmission System.
Description: Electric Refund Report (Compliance Only) of PJM Interconnection, L.L.C.
Filed Date: 01/14/2008.
Accession Number: 20080114–5121.
Comment Date: 5 p.m. Eastern Time on Monday, February 4, 2008.

Docket Numbers: ER05–131–005; ER05–639–003; ER07–528–002; ER06–1446–003.
Applicants: Erie Boulevard Hydropower, LP; Brookfield Power Piney & Deep Creek LLC; Brookfield Energy Marketing U.S. LLC; Hawks Nest Hydro LLC.
Description: Erie Boulevard Hydropower, LP *et al.* submit a Notice of Change in Status.
Filed Date: 01/18/2008.
Accession Number: 20080123–0015.
Comment Date: 5 p.m. Eastern Time on Friday, February 8, 2008.

Docket Numbers: ER05–283–009; ER05–1232–0080.
Applicants: JPMorgan Chase Bank, N.A.; JP Morgan Ventures Energy Corporation0.
Description: Notice of Non-Material Change in Status of JPMorgan Chase Bank, N.A., *et al.*
Filed Date: 01/16/2008.
Accession Number: 20080116–5040.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 6, 2008.

Docket Numbers: ER06–19–003; ER98–4512–005; ER06–761–002.
Applicants: NewPage Energy Services, LLC; Consolidated Water Power Company; Rumford Paper Company.
Description: Consolidated Water Power Co. *et al.* submit a Notice of Change in Status.
Filed Date: 01/22/2008.
Accession Number: 20080124–0158.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 12, 2008.

Docket Numbers: ER06–864–008; ER00–2885–016; ER01–2765–015; ER02–2102–015; ER03–1283–010.
Applicants: Bear Energy LP; Cedar Brakes I, L.L.C.; Cedar Brakes II, L.L.C.; Utility Contract Funding, L.L.C.; Vineland Energy LLC.
Description: Bear Energy LP *et al.* submit Substitute First Revised Sheet 1 *et al.* to its FERC Electric Rate Schedule FERC No. 1.
Filed Date: 01/16/2008.
Accession Number: 20080118–0202.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 6, 2008.

Docket Numbers: ER07–809–003; ER07–809–005.
Applicants: Florida Power Corporation.
Description: Status Report of Seminole Electric Cooperative, Inc. and Jan 22nd Supplement Motion to withdraw Attach. A.
Filed Date: 01/14/2008.
Accession Number: 20080114–5085.
Comment Date: 5 p.m. Eastern Time on Monday, February 4, 2008.

Docket Numbers: ER07–1096–005.
Applicants: Niagara Mohawk Power Corporation.
Description: Niagara Mohawk Power Co. submits an addendum to the 1/3/08 filing of a Refund Report pursuant to the 11/19/07 Letter Order.
Filed Date: 01/18/2008.
Accession Number: 20080123–0013.
Comment Date: 5 p.m. Eastern Time on Friday, February 8, 2008.

Docket Numbers: ER07–1105–003.
Applicants: Cedar Creek Wind Energy, LLC.
Description: Cedar Creek Wind Energy, LLC submits an amendment to its Rate Schedule FERC No. 1.
Filed Date: 01/22/2008.
Accession Number: 20080124–0159.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 12, 2008.

Docket Numbers: ER07–1415–001.
Applicants: Xcel Energy Services Inc.
Description: NSP Companies submit a compliance filing pursuant with the Commission's 12/21/07 Order.
Filed Date: 01/22/2008.
Accession Number: 20080124–0160.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 12, 2008.

Docket Numbers: ER07–887–002; EC07–89–000.
Applicants: ITC Holdings Corporation.
Description: ITC Midwest, LLC submits revisions to the Midwest ISO Open Access Transmission and Energy Markets Tariff, FERC Electric Tariff, Third Revised Volume 1 .
Filed Date: 01/22/2008.
Accession Number: 20080124–0161.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 12, 2008.

Docket Numbers: ER08–25–002; ER08–26–002.
Applicants: Ocean State Power; Ocean State Power II.
Description: Ocean State Power and Ocean State Power II submit revised tariff sheets in compliance with a 12/18/07 Order.
Filed Date: 01/17/2008.
Accession Number: 20080122–0226.
Comment Date: 5 p.m. Eastern Time on Thursday, February 7, 2008.

Docket Numbers: ER08–49–002.
Applicants: Michigan Electric Transmission Co., LLC.
Description: Michigan Electric Transmission Co. LLC submits a revised Distribution-Transmission Interconnection Agreement in compliance with Order 614.
Filed Date: 01/22/2008.
Accession Number: 20080124–0165.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 12, 2008.

Docket Numbers: ER08–54–001.
Applicants: ISO New England Inc.
Description: Service Providers submits revisions to Schedule 20A of the ISO New England Inc's OATT in compliance with FERC's Order 890.
Filed Date: 01/17/2008.
Accession Number: 20080122–0217.
Comment Date: 5 p.m. Eastern Time on Thursday, February 7, 2008.

Docket Numbers: ER08–92–002.
Applicants: Virginia Electric and Power Company.
Description: Virginia Electric and Power Company submits a supplemental response to FERC's 12/19/07 Deficiency Letter.
Filed Date: 01/18/2008.
Accession Number: 20080123–0017.
Comment Date: 5 p.m. Eastern Time on Thursday, January 31, 2008.

Docket Numbers: ER08–109–001.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits proposed revisions to its OATT and Energy Markets Tariff.
Filed Date: 01/22/2008.
Accession Number: 20080124–0162.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 12, 2008.

Docket Numbers: ER08–140–002.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corp. submits revisions to the CAISO Tariff and the Market Redesign and Technology Upgrade Tariff in compliance with FERC's 12/21/07 Order.

Filed Date: 01/18/2008.
Accession Number: 20080123–0014.
Comment Date: 5 p.m. Eastern Time on Friday, February 8, 2008.

Docket Numbers: ER08–187–002.
Applicants: The United Illuminating Company.
Description: The United Illuminating Co. submits substitute tariff sheet for Schedule 11 that modifies the terminology used to drive on-peak and off-peak pricing for non-firm point-to-point transmission service.
Filed Date: 01/22/2008.
Accession Number: 20080124–0163.
Comment Date: 5 p.m. Eastern Time on Thursday, January 31, 2008.

Docket Numbers: ER08–259–001; ER08–260–001.
Applicants: Duquesne Light Company; Duquesne Power, LLC; Duquesne Keystone LLC; Duquesne Conemaugh LLC.
Description: Duquesne Light Co et al submit Sub First Revised Sheet 1 *et al.* to FERC Electric Rate Schedule 1.
Filed Date: 01/16/2008.
Accession Number: 20080118–0048.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 6, 2008.

Docket Numbers: ER08–303–001.
Applicants: Williams Gas Marketing, Inc.
Description: Williams Gas Marketing Inc. submits an amended market-based rate tariff replacing the tariffs submitted in the proceedings on 12/5 and 12/11/07.
Filed Date: 01/15/2008.
Accession Number: 20080117–0037.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 5, 2008.

Docket Numbers: ER08–444–001; ER98–1992–004; ER06–1143–002.
Applicants: NSTAR Electric Company; Medical Area Total Energy Plant, Inc; MATEP LLC.
Description: NSTAR Electric Co. *et al.* submit the three-year market-based rate update pursuant to Order 697 and 697–A. and Jan 15th correction to tariff sheets.
Filed Date: 01/14/2008.
Accession Number: 20080122–0223.
Comment Date: 5 p.m. Eastern Time on Friday, March 14, 2008.

Docket Numbers: ER08–447–000; ER08–448–000.
Applicants: PSEG Fossil LLC.
Description: PSEG Energy Resources & Trade LLC et al submits updated market power analysis and revised market-based rates tariff in compliance with Order 69 and the initial application for market-based rates etc.
Filed Date: 01/14/2008.
Accession Number: 20080117–0041.
Comment Date: 5 p.m. Eastern Time on Monday, February 4, 2008.

Docket Numbers: ER08–454–000.
Applicants: ISO New England Inc.
Description: ISO New England Inc. and the Connecticut Light and Power Co *et al.* submit the Original Service Agreement under Schedule 22.
Filed Date: 01/18/2008.
Accession Number: 20080122–0340.
Comment Date: 5 p.m. Eastern Time on Friday, February 8, 2008.

Docket Numbers: ER08–455–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, LLC submits a change to the default allocation provisions of the PJM Operating Agreement.
Filed Date: 01/18/2008
Accession Number: 20080122–0229
Comment Date: 5 p.m. Eastern Time on Friday, February 8, 2008

Docket Numbers: ER08–456–000.
Applicants: Public Service Company of New Mexico.
Description: Public Service Company of New Mexico submits a long-term firm point-to-point transmission service agreement with Cargill Power Markets, LLC.
Filed Date: 01/18/2008.
Accession Number: 20080122–0230.
Comment Date: 5 p.m. Eastern Time on Friday, February 8, 2008.

Docket Numbers: ER08–457–000.
Applicants: ColumbiaGrid.
Description: Avista Corp and Puget Sound Energy, Inc submits Amendments to the Planning and Expansion Functional Agreement.
Filed Date: 01/18/2008.
Accession Number: 20080122–0231.
Comment Date: 5 p.m. Eastern Time on Friday, February 8, 2008.

Docket Numbers: ER08–458–000.
Applicants: Florida Power Corporation.
Description: Florida Power Corp. submits the Amended 1990 Interconnection Agreement, First Revised Rate Schedule 129 with Seminole Electric Coop, Inc.
Filed Date: 01/22/2008
Accession Number: 20080124–0145
Comment Date: 5 p.m. Eastern Time on Tuesday, February 12, 2008

Docket Numbers: ER08–459–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits a Transmission to Transmission Interconnection Agreement with Hoosier Energy Rural Electric Coop, Inc.
Filed Date: 01/22/2008.
Accession Number: 20080124–0146.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 12, 2008.

Docket Numbers: ER08–460–000.
Applicants: Entergy Gulf States Louisiana, L.L.C.; Entergy Texas, Inc.
Description: Entergy Gulf States Louisiana, LLC and Entergy Texas, Inc. submit a Notice of Succession.
Filed Date: 01/22/2008.
Accession Number: 20080124–0147.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 12, 2008.

Docket Numbers: ER08–461–000.
Applicants: Wisconsin Public Service Corporation.
Description: Wisconsin Public Service Corp. and Minnesota Power submit the Balancing Area Operations Coordination Agreement designated as Rate Schedule 181.
Filed Date: 01/22/2008.
Accession Number: 20080124–0148.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 12, 2008.

Docket Numbers: ER08–462–000.
Applicants: Zeeland Power Company, LLC.
Description: Consumers Energy Co. submits Notice of Cancellation of FERC Electric Tariff, Original Volume 1.
Filed Date: 01/22/2008.
Accession Number: 20080124–0149.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 12, 2008.

Docket Numbers: ER08–463–000.
Applicants: American Electric Power Service Corporation.
Description: Southwestern Electric Power Company submits a proposed Restated and Amended Flint Creek Power Plant Power Coordination, Interchange and Transmission Service Agreement with Arkansas Electric Cooperative Corp.
Filed Date: 01/22/2008.
Accession Number: 20080124–0150.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 12, 2008.

Docket Numbers: ER08–464–000.
Applicants: MidAmerican Energy Company.
Description: MidAmerican Energy Company submits an Engineering and Procurement Agreement with Iberdrola Renewable Energies USA, Ltd.
Filed Date: 01/22/2008.
Accession Number: 20080124–0151.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 12, 2008.

Docket Numbers: ER08–465–000.
Applicants: Consumers Energy Company.
Description: Consumers Energy Company submits Notice of Cancellation of Service Agreement filed by Edison Sault Electric Company submitted on 12/14/07 re the executed First Revised Service Agreement.
Filed Date: 01/22/2008.
Accession Number: 20080124–0152.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 12, 2008.

Docket Numbers: ER08–466–000.
Applicants: American Electric Power Service Corporation.
Description: AEP Texas Central Company submits an executed Interconnection Agreement with Electric Transmission Texas, LLC.
Filed Date: 01/22/2008.
Accession Number: 20080124–0153.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 12, 2008.

Docket Numbers: ER08–467–000.
Applicants: Consumers Energy Company.
Description: Consumers Energy submits its Notice of Succession filing package.
Filed Date: 01/22/2008.
Accession Number: 20080124–0154.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 12, 2008.

Docket Numbers: ER08–468–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Co. submits the DPT 1 Project Letter Agreement for Proponent's Environmental Assessment Work.
Filed Date: 01/22/2008.
Accession Number: 20080124–0156.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 12, 2008.
Docket Numbers: ER08–469–000.
Applicants: Terra-Gen VG Wind, LLC.
Description: Terra-Gen VG Wind, LLC submits Notice of Succession to reflect a name change, Rate Schedule FERC 1, Original Sheet 1–64.
Filed Date: 01/22/2008.
Accession Number: 20080124–0155.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 12, 2008.

Docket Numbers: ER08–470–000.
Applicants: Terra-Gen 251 Wind, LLC.
Description: Terra-Gen 251 Wind, LLC submits Notice of Succession reflecting the adoption of Rate Schedule FERC 1, First Revised Sheet 1–91.
Filed Date: 01/22/2008.
Accession Number: 20080124–0167.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 12, 2008.

Docket Numbers: ER96–1085–011.
Applicants: South Carolina Electric & Gas Company.
Description: South Carolina Electric & Gas Co. submits revised pages of its Negotiated Market Sales Tariff, Fifth Revised Volume 2.
Filed Date: 01/22/2008.
Accession Number: 20080124–0157.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 12, 2008.

Docket Numbers: ER96–2585–009; ER98–6–013; ER99–2387–006; ER02–1470–006; ER02–1573–006; ER05–1249–006; EC06–125–000.
Applicants: Niagara Mohawk Power Corporation; New England Power Company; KeySpan-Ravenswood, Inc; KeySpan-Glenwood Energy Center, LLC; KeySpan-Port Jefferson Energy Center, LLC; Granite State Electric Company, The Narragansett Electric Company; National Grid plc and KeySpan Corporation.
Description: National Grid USA submits Original Sheet 1 *et al.* to FERC Electric Tariff, Sixth Revised Volume 1 to comply with the Commission's 12/20/07 Order and Order 697.
Filed Date: 01/22/2008.
Accession Number: 20080124–0164.
Comment Date: 5 p.m. Eastern Time on Monday, March 24, 2008.

Docket Numbers: ER97–886–010.
Applicants: Brooklyn Navy Yard Cogeneration Partners.
Description: Application of Brooklyn Navy Yard Cogeneration Partners for Determination of Category 1 Status Under Order No. 697.
Filed Date: 01/14/2008.
Accession Number: 20080114–5100.
Comment Date: 5 p.m. Eastern Time on Friday, March 14, 2008.

Docket Numbers: ER99–1005–000; ER96–3107–000; ER03–1079–000.
Applicants: Kansas City Power & Light Company; Strategic Energy, LLC: Aquila, Inc.
Description: Kansas City Power & Light Co *et al.* submit modification to certain commitments adopted in February 2007 pursuant to Order 697.
Filed Date: 01/16/2008.
Accession Number: 20080118–0210.
Comment Date: 5 p.m. Eastern Time on Monday, March 17, 2008.

Docket Numbers: ER99–3151–008; ER97–837–007; ER03–327–002.
Applicants: PSEG Energy Resources & Trade LLC; Public Service Electric and Gas Company; PSEG Power Connecticut LLC.
Description: PSEG Energy Resources & Trade LLC et al submit updated market power analysis and revised market-based rates tariff in compliance with Order 69 .
Filed Date: 01/14/2008.
Accession Number: 20080117–0041.
Comment Date: 5 p.m. Eastern Time on Friday, March 14, 2008.

Docket Numbers: PH08–15–000.
Applicants: Pacolet Milliken Enterprises, Inc.
Description: FERC Form 65 B Waiver Notification of Pacolet Milliken Enterprises, Inc. under PH08–15.
Filed Date: 01/02/2008.
Accession Number: 20080102–5023.
Comment Date: 5 p.m. Eastern Time on Friday, February 15, 2008.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES08–9–001.
Applicants: Bicent (California) Malburg LLC.
Description: Bicent (California) Malburg LLC clarifies and supplement its application for approval under section 204 of the F PA..
Filed Date: 01/16/2008.
Accession Number: 20080118–0199.
Comment Date: 5 p.m. Eastern Time on Monday, January 28, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online

service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–1848 Filed 1–31–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Boulder Canyon Project

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Proposed Base Charge and Rates Adjustment.

SUMMARY: The Western Area Power Administration (Western) is proposing an adjustment to the Boulder Canyon Project (BCP) electric service base charge and rates. The current base charge and rates expire September 30, 2008, under Rate Schedule BCP–F7. The current base charge is not sufficient to cover all annual costs including operation, maintenance, replacements, and interest expense, and to repay investment obligations within the required period. The proposed base charge will provide sufficient revenue to cover all annual costs and to repay investment obligations within the allowable period. A detailed rate package that identifies the reasons for the base charge and rates adjustment will be available in March 2008. The proposed base charge and rates are scheduled to become effective on October 1, 2008, and will remain in effect through September 30, 2009. This **Federal Register** notice initiates the formal process for the proposed base charge and rates.

DATES: The consultation and comment period will begin today and will end May 1, 2008. Western will present a detailed explanation of the proposed base charge and rates at a public information forum on April 2, 2008, beginning at 10:30 a.m. MST, in Phoenix, AZ. Western will accept oral and written comments at a public comment forum on April 23, 2008, beginning at 10:30 a.m. MST at the same location. Western will accept written comments any time during the consultation and comment period.

ADDRESSES: The public information forum and public comment forum will be held at the Desert Southwest Customer Service Regional Office, located at 615 South 43rd Avenue, Phoenix, AZ, on the dates cited above. Send written comments to: J. Tyler Carlson, Regional Manager, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, e-mail *carlson@wapa.gov*. Written comments may also be faxed to (602) 605–2490, attention: Jack Murray. Western will post information about the rate process on its Web site at *http://www.wapa.gov/dsw/pwrmkt/BCP/RateAdjust.htm*. Western will post official comments received via letter, fax, and e-mail to its Web site after the close of the comment period. Western must receive written comments by the end of the consultation and comment period to ensure they are considered in Western's decision process.

As access to Western facilities is controlled, any U.S. citizen wishing to attend any meeting held at Western must present an official form of picture identification, such as a U.S. driver's license, U.S. passport, U.S. Government ID, or U.S. Military ID, at the time of the meeting. Foreign nationals should contact Western at least 45 days in advance of the meeting to obtain the necessary form for admittance to Western.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Murray, Rates Team Lead, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, (602) 605–2442, e-mail *jmurray@wapa.gov*.

SUPPLEMENTARY INFORMATION: The proposed base charge and rates for BCP electric service are designed to recover an annual revenue requirement that includes the investment repayment, interest, operation and maintenance, replacements, payment to states, visitor services, and uprating payments. The total costs are offset by the projected revenue from water sales, visitor services, water pumping energy sales, facilities use charges, regulation and spinning reserve services, miscellaneous leases, and late fees. The projected annual revenue requirement is the base charge for electric service and is divided equally between capacity dollars and energy dollars. Annual energy dollars are divided by annual energy sales, and annual capacity dollars are divided by annual capacity sales to determine the proposed energy rate and the proposed capacity rate.

The Deputy Secretary of Energy approved the existing rate formula for calculating the base charge and rates in Rate Schedule BCP–F7 for BCP electric service on August 11, 2005, (Rate Order No. WAPA–120, 70 FR 50316, August 26, 2005). The Federal Energy Regulatory Commission (Commission) confirmed and approved the rate formula on a final basis in Docket No. EF05–5091–000 issued June 22, 2006 (115 FERC ¶ 61,362). Rate Schedule BCP–F7 became effective on October 1, 2005, for the period ending September 30, 2010. The base charge for FY 2009 is $71,211,438, the forecasted energy rate is 8.74 mills per kilowatthour (mills/kWh), the forecasted capacity rate is $1.77 per kilowattmonth (kWmonth), and the composite rate is 17.49 mills/kWh.

Under Rate Schedule BCP–F7, the proposed rates for BCP electric service will result in an overall composite rate decrease of about one percent. The following table compares the current and proposed base charge and rates.

COMPARISON OF CURRENT AND PROPOSED BASE CHARGE AND RATES

	Current October 1, 2007 through September 30, 2008	Proposed October 1, 2008 through September 30, 2009	% Change
Composite Rate (mills/kWh)	17.64	17.49	−1
Base Charge ($)	66,975,283	71,211,438	6
Energy Rate (mills/kWh)	8.82	8.74	−1
Capacity Rate ($/kWmonth)	1.63	1.77	9

The increase in the electric service base charge and capacity rate is primarily the result of projecting no year-end carryover from FY 2008 into FY 2009. Initial analysis of the projected financial data for FY 2009 reflects a

slight decrease in overall annual costs and a slight increase in other revenues when compared to FY 2008. However, since there is no projected year-end carryover into FY 2009 the result is an overall increase in the base charge for FY 2009. Another factor contributing to the increase in the capacity rate is the decrease in capacity sales associated with lower Lake Mead water elevations. The decrease in the composite and energy rates is due to a slight increase in the FY 2009 energy sales from FY 2008.

Legal Authority

Western will hold both a public information forum and a public comment forum. After review of public comments and possible amendments or adjustments, Western will recommend the Deputy Secretary of Energy approve the proposed base charge and rates on a final basis.

Western is establishing an electric service base charge and rates for BCP under the Department of Energy Organization Act (42 U.S.C. 7152); the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), and other acts that specifically apply to the project involved.

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to Western's Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand or to disapprove such rates to the Commission. Existing Department of Energy (DOE) procedures for public participation in power rate adjustments (10 CFR part 903) were published on September 18, 1985.

Availability of Information

All brochures, studies, comments, letters, memorandums or other documents that Western initiates or uses to develop the proposed rates are available for inspection and copying at the Desert Southwest Customer Service Regional Office, Western Area Power Administration, located at 615 South 43rd Avenue, Phoenix, AZ. Many of these documents and supporting information are also available on Western's Web site at *http://www.wapa.gov/dsw/pwrmkt/BCP/RateAdjust.htm*.

Ratemaking Procedure Requirements

Environmental Compliance

In compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*), the Council On Environmental Quality Regulations for implementing NEPA (40 CFR parts 1500–1508), and DOE NEPA Implementing Procedures and Guidelines (10 CFR part 1021), Western has determined this action is categorically excluded from preparing an environmental assessment or an environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866, accordingly, no clearance of this notice by the Office of Management and Budget is required.

Dated: January 10, 2008.

Timothy J. Meeks,

Administrator.

[FR Doc. E8–1872 Filed 1–31–08; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8523–6]

Clean Water Act Section 303(d): Availability of 16 Total Maximum Daily Loads (TMDL) in Louisiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability for comment of the administrative record files for 16 TMDLs and the calculations for these TMDLs prepared by EPA Region 6 for waters listed in the Pearl River and the Terrebonne River Basins of Louisiana, under section 303(d) of the Clean Water Act (CWA). These TMDLs were completed in response to a court order in the lawsuit styled *Sierra Club, et al.* v. *Clifford, et al.*, No. 96–0527, (E.D. La.).

DATES: Comments must be submitted in writing to EPA on or before March 3, 2008.

ADDRESSES: Comments on the 16 TMDLs should be sent to Diane Smith, Environmental Protection Specialist, Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202–2733 or e-mail: *smith.diane@epa.gov*. For further information, contact Diane Smith at (214) 665–2145 or fax 214.665.7373. The administrative record files for the 16 TMDLs are available for public inspection at this address as well. Documents from the administrative record files may be viewed at *http://www.epa.gov/earth1r6/6wq/npdes/tmdl/index.htm*, or obtained by calling or writing Ms. Smith at the above address. Please contact Ms. Smith to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Diane Smith at (214) 665–2145.

SUPPLEMENTARY INFORMATION: In 1996, two Louisiana environmental groups, the Sierra Club and Louisiana Environmental Action Network (plaintiffs), filed a lawsuit in Federal Court against the EPA, styled *Sierra Club, et al.* v. *Clifford, et al.*, No. 96–0527, (E.D. La.). Among other claims, plaintiffs alleged that EPA failed to establish Louisiana TMDLs in a timely manner. EPA proposes six of these TMDLs pursuant to a consent decree entered in this lawsuit.

EPA Seeks Comment on 16 TMDLs

By this notice EPA is seeking comment on the following 16 TMDLs for waters located within Louisiana basins:

Subsegment	Waterbody name	Pollutant
.....	.....	
090101	Pearl River—MS State Line to Pearl River Navigation Canal	Fecal Coliform.
090104	Peters Creek—Headwaters to Pearl River	Fecal Coliform.
090106	Holmes Bayou—From the Pearl River to the West Pearl River (scenic)	Turbidity.
090201	West Pearl River—From Headwaters to confluence with Holmes Bayou (scenic)	Turbidity.
090202	West Pearl River—From confluence with Holmes Bayou to the Rigolets (includes east and west mouths) (scenic).	Turbidity.
090301	Pushepatapa Creek—MS State Line to Pearl River floodplain	Fecal Coliform.
090401	Bogue Lusa Creek—Headwaters to Pearl River	Fecal Coliform.

Subsegment	Waterbody name	Pollutant
090501	Bogue Chitto River—From MS State Line to Pearl River Navigation Canal (scenic).	Turbidity.
090502	Big Silver Creek—Headwaters to Bogue Chitto River	Fecal Coliform.
090505	Bonner Creek—Headwaters to Bogue Chitto River	Fecal Coliform.
090506	Thigpen Creek—Headwaters to Bogue Chitto River	Fecal Coliform.
090105	Pearl River Navigation Canal—From Pools Bluff to Lock No. 3 (includes east and west mouths) (scenic).	Dissolved Oxygen.
090204	Pearl River Navigation Canal—Below Lock No. 3	Dissolved Oxygen.
090207	Middle Pearl River and West Middle Pearl River—From West Pearl River to Little Lake.	Dissolved Oxygen.
120606	Bayou Blue—Grand Bayou Canal to Boundary between segments 1206 and 1207 (Estuarine).	Dissolved Oxygen and Nutrients.

EPA requests that the public provide to EPA any water quality related data and information that may be relevant to the calculations for the 16 TMDLs. EPA will review all data and information submitted during the public comment period and revise the TMDLs where appropriate. EPA will then forward the TMDLs to the Louisiana Department of Environmental Quality (LDEQ). The LDEQ will incorporate the TMDLs into its current water quality management plan.

Dated: January 25, 2008.

Miguel I. Flores,

Director, Water Quality Protection Division, EPA Region 6.

[FR Doc. E8–1897 Filed 1–31–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8523–5]

Access to Confidential Business Information by Enrollees Under the Senior Environmental Employment Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized grantee organizations under the Senior Environmental Employment (SEE) Program and their enrollees access to information which has been submitted to EPA under the environmental statutes administered by the Agency. Some of this information may be claimed or determined to be confidential business information (CBI).

DATES: Comments concerning CBI access will be accepted on or before February 8, 2008.

ADDRESSES: Comments should be submitted to: Susan Street, National Program Director, Senior Environmental Employment Program (MC 3605A), U.S. Environmental Protection Agency; Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Susan Street at (202) 564–0410.

SUPPLEMENTARY INFORMATION: The Senior Environmental Employment (SEE) program is authorized by the Environmental Programs Assistance Act of 1984 (Pub. L. 98–313), which provides that the Administrator of the Environmental Protection Agency may ''make grants to, or enter into cooperative agreements with,'' specified private nonprofit organizations for the purpose of ''providing technical assistance to Federal, State, and local environmental agencies for projects of pollution prevention, abatement, and control.'' Cooperative agreements under the SEE program provide support for many functions in the Agency, including clerical support, staffing hot lines, providing support to Agency enforcement activities, providing library services, compiling data, and support in scientific, engineering, financial, and other areas.

In performing these tasks, grantees and cooperators under the SEE program and their enrollees may have access to potentially all documents submitted under the Clean Air Act (CAA), the Clean Water Act (CWA), the Safe Drinking Water Act (SDWA), the Resource Conservation and Recovery Act (RCRA), the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the Emergency Planning & Community Right-to-Know Act (EPCRA), the Federal Food, Drug, and Cosmetic Act (FFDCA), and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), to the extent that these statutes allow disclosure of confidential information to ''authorized representatives of the United States'' or to ''contractors.'' Some of these documents may contain information claimed as confidential.

EPA provides confidential information to enrollees working under the following cooperative agreements:

Cooperative Agreement No.	Organization
National Association for Hispanic Elderly	
QS–833757	NAHE
Q–833436	NAHE
National Asian Pacific Center on Aging	
Q–832831	NAPCA
Q–832943	NAPCA
Q–832965	NAPCA
Q–832972	NAPCA
Q–832973	NAPCA
Q–832974	NAPCA
QS–833084	NAPCA
National Caucus and Center on Black Aged, Inc.	
Q–832975	NCBA
Q–832977	NCBA
National Council On the Aging, Inc.	
Q–832828	NCOA
Q–832970	NCOA
Q–833413	NCOA
Q–833439	NCOA
National Older Workers Career Center	
Q–832838	NOWCC
Q–832852	NOWCC
Q–832889	NOWCC
Q–832890	NOWCC
Q–832891	NOWCC
Q–832892	NOWCC
Q–832893	NOWCC
Q–832922	NOWCC
Q–832925	NOWCC
Q–832928	NOWCC
Q–832945	NOWCC
Senior Service America, Inc.	
Q–832621	SSAI
Q–832961	SSAI
Q–832969	SSAI
Q–832979	SSAI
Q–833379	SSAI
Q–833383	SSAI
Q–833403	SSAI

Among the procedures established by EPA confidentiality regulations for granting access to confidential business information is notification to the

submitters of CBI that SEE-grantee organizations and their enrollees will have access to this information. See 40 CFR 2.301(h)(2)(iii) for information submitted under the CAA, 40 CFR 350.23 for EPCRA, and corresponding provisions of 40 CFR 2.302–2.311, for other statutes listed above. This document is intended to fulfill that requirement.

The grantee organizations are required by the cooperative agreements to protect confidential information. SEE enrollees are required to sign confidentiality agreements and to adhere to the same security procedures as Federal employees.

Dated: January 28, 2008.

Susan Street,

SEE Program Manager, HQ Operations Division, Immediate Office.

[FR Doc. E8–1887 Filed 1–31–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6695–6]

Environmental Impact Statement and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 6, 2007 (72 FR 17156).

Draft EISs

EIS No. 20070349, ERP No. D–NAS–A12044–00, Programmatic—Constellation Program, Develop the Flight Systems and Earth-based Ground Infrastructure for Future Missions, International Space Station, The Moon, Mars, and Beyond, Brevard and Volusia Counties, FL; Hancock County, Ms; Orleans Parish, LA; Harris County, TX; Madison County, AL; Cuyahoga and Erie Counties, OH; Hampton, VA; Santa Clara County, CA; Dona Ana and Otero Counties, NM; and Box Elder and Davis Counties, UT.

Summary: EPA does not object to the proposed action. Rating LO.

EIS No. 20070410, ERP No. D–BLM–K67057–NV, Cortez Hills Expansion Project, Proposes to Construct and Operate a New Facilities and Expansion of the Existing Open-Pit Gold Mining and Processing Operations, Crescent Valley, Lander and Eureka Counties, NV.

Summary: EPA expressed environmental concerns about wetland/riparian habitat mitigation and reclamation and post-closure financial assurance and recommended the Final EIS include additional information regarding the wetland/riparian habitat mitigation plan, financial assurance for reclamation activities and post-closure mitigation and monitoring. Rating EC2.

EIS No. 20070435, ERP No. D–BLM–J65494–UT, Richfield Field Office Resource Management Plan, Implementation, Future Management of the Public Lands and Resource, Glen Canyon National Recreation Area, Capitol Reef and Canyonlands National Parks, Sanpete, Sevier, Piute, Wayne and Garfield Counties, UT.

Summary: EPA expressed environmental concerns about air quality, water quality, and riparian/wetland impacts. In addition, EPA has concerns about impacts from recreation activities. Rating EC2.

Final EISs

EIS No. 20070516, ERP No. F–FHW–D40338–00, U.S. 301 Project Development, Transportation Improvements from MD State Line to DE–1, South of the Chesapeake and Delaware Canal, New Castle County, DE.

Summary: EPA's previous issues have been resolved; therefore, EPA has no objections to the proposed action.

EIS No. 20070528, ERP No. F–AFS–J65487–UT, Millville Peak/Logan Peak Road Relocation Project, Provide a Safe, Reliable, Ground Access Route, Logan Ranger District, Wasatch-Cache National Forest, Cache County, UT.

Summary: While some of EPA's previous issues have been resolved, EPA believes that the proposed action will continue to cause net environmental impacts to water quality.

Dated: January 29, 2008.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 08–450 Filed 1–31–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2007–1148; FRL–8524–2]

Board of Scientific Counselors, Computational Toxicology Subcommittee Meeting—February 2008

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, the Environmental Protection Agency, Office of Research and Development (ORD), gives notice of one meeting of the Board of Scientific Counselors (BOSC) Computational Toxicology Subcommittee.

DATES: The meeting (via conference call) will be held on Wednesday, February 20, 2008 from 10 a.m. to 12 noon eastern time. The meeting may adjourn early if all business is finished. Requests for the draft agenda or for making oral presentations at the meeting will be accepted up to 1 business day before the meeting.

ADDRESSES: Participation in the conference call will be by teleconference only—a meeting room will not be used. Members of the public may obtain the call-in number and access code for the call from Lorelei Kowalski, whose contact information is listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice. Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2007–1148, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* Send comments by electronic mail (e-mail) to: *ORD.Docket@epa.gov,* Attention Docket ID No. EPA–HQ–ORD–2007–1148.
- *Fax:* Fax comments to: (202) 566–0224, Attention Docket ID No. EPA–HQ–ORD–2007–1148.
- *Mail:* Send comments by mail to: Board of Scientific Counselors, Computational Toxicology Subcommittee Meetings—end 2007/early 2008 Docket, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–ORD–2007–1148.
- *Hand Delivery or Courier.* Deliver comments to: EPA Docket Center (EPA/DC), Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. EPA–HQ–ORD–2007–1148.

Note: This is not a mailing address. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2007–1148. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Board of Scientific Counselors, Computational Toxicology Subcommittee Meetings—end 2007/early 2008 Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the ORD Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Officer via mail at: Lorelei Kowalski, Mail Code 8104–R, Office of Science Policy, Office of Research and Development, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via phone/voice mail at: (202) 564–3408; via fax at: (202) 565–2911; or via e-mail at: *kowalski.lorelei@epa.gov.*

SUPPLEMENTARY INFORMATION:

General Information

Any member of the public interested in receiving a draft BOSC agenda or making a presentation at the meeting may contact Lorelei Kowalski, the Designated Federal Officer, via any of the contact methods listed in the **FOR FURTHER INFORMATION CONTACT** section above. In general, each individual making an oral presentation will be limited to a total of three minutes.

Proposed agenda item for the meeting includes, but is not limited to: Discussion of the subcommittee's draft report on ORD's National Center for Computational Toxicology (NCCT). The meeting is open to the public. The subcommittee roster and charge can be accessed at: *http://www.epa.gov/osp/bosc/subcomm-ctox.htm.*

Information on Services for Individuals with Disabilities: For information on access or services for individuals with disabilities, please contact Lorelei Kowalski at (202) 564–3408 or *kowalski.lorelei@epa.gov.* To request accommodation of a disability, please contact Lorelei Kowalski, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: January 28, 2008.

Jeff Morris,

Acting Director, Office of Science Policy.

[FR Doc. E8–1852 Filed 1–31–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8524–1]

EPA Science Advisory Board; Notification of a Public Teleconference and Meeting of the Science Advisory Board Acrylamide Review Panel

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces a public teleconference and meeting of the Acrylamide Review Panel (ARP) to review the Agency's draft assessment, ''IRIS Toxicological Review of Acrylamide''.

DATES: The SAB will hold the public teleconference on February 20, 2008. The teleconference will be held from 1:30 p.m. to 3:30 p.m. (Eastern Time). A face-to-face meeting will be held on March 10, 2008 and March 11, 2008 from 9 a.m. to 5 p.m. (Eastern Time) and will continue on March 12, 2008 from 9 a.m. to 1 p.m. (Eastern Time).

Location: The February 20, 2008 telephone conference will be conducted by phone only. The March 10–12, 2008 face-to-face meeting will be held in the Washington DC metropolitan area. The actual venue will be announced on the SAB Web site at: *http://www.epa.gov/sab.*

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 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. Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the EPA SAB Acrylamide Review Panel will hold a public teleconference and face-to-face meeting to review EPA's draft IRIS assessment.

Background: EPA's Office of Research and Development (ORD) had requested that the SAB peer review the Agency's draft assessment, ''Toxicological Review of Acrylamide.'' Background on this SAB review and the process for formation of this review panel was

provided in a **Federal Register** Notice published on March 29, 2007 (72 FR 60 14804–14805). The purpose of this upcoming teleconference is for the SAB Review Panel to discuss EPA's charge questions and plan for the face-to-face meeting. The Panel will then discuss and deliberate on the charge questions at the face-to-face meeting.

Availability of Materials: The draft agendas and other materials will be posted on the SAB Web site at: *http://www.epa.gov/sab* prior to each meeting. For questions and information concerning the Agency's draft assessment, (*http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=187729*), please contact Dr. Rob Dewoskin, at (919) 541–1089, or *dewoskin.rob@epa.gov*.

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for the Acrylamide Review Panel to consider throughout the advisory process. *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. At the face-to-face meeting, presentations will be limited to five minutes, with no more than a total of one 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 February 13, 2008 for the teleconference and by March 3, 2008 for the face-to-face meeting, at the contact information noted above. *Written Statements:* Written statements should be received in the SAB Staff Office by February 13, 2008, so that the information may be made available to the SAB for their consideration prior to the teleconference or by March 3, 2008 for their consideration prior to the face-to-face meeting. Written statements should be supplied to the DFO via e-mail to *shallal.suhair@epa.gov* (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 meeting, to give EPA as much time as possible to process your request.

Dated January 28, 2008.

Anthony F. Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. E8–1869 Filed 1–31–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8523–9]

Notification of a Public Teleconference of the Science Advisory Board Exposure and Human Health Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a public teleconference of the SAB Exposure and Human Health Committee (EHHC) to discuss advisory activities for the coming year.

DATES: The SAB will hold a public teleconference on February 29, 2008. The teleconference will be held from 2 p.m. to 4 p.m. (Eastern Time).

ADDRESSES: 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 the Science Advisor (OSA) has requested that the SAB EHHC evaluate three Agency activities in the coming year. EPA will provide introductory briefings to the committee on: (1) Exposure Assessment Guidelines; (2) Immunosuppression Guidance; and (3) Microbial Risk Assessment Guidance Document. The Agency will offer these briefings to acquaint the EHHC with the Agency's activities in preparation for future meetings. Preliminary background information on these activities follows.

Exposure Assessment Guidelines: The practice of exposure assessment has been evolving rapidly and has changed significantly since the 1992 publication of EPA's Guidelines for Exposure Assessment. The science has advanced in the areas of personal monitoring and modeling, activity pattern analysis, and susceptible populations and life stages. The EPA has published specific guidance in such areas as probabilistic analyses, exposure factors, aggregate exposure and cumulative risk, and community-based research. The update incorporates and refers to advances and changes in the theory and practice of exposure assessment. The SAB provided a consultation on the general goals, topic areas, and approach for the update in September 2006 (SAB letter dated February 28, 2007, EPA–SAB–07–003). The SAB is asked to provide peer review, and to comment specifically on the scope and content of the updated Guidelines, the completeness and clarity of the text, the suitability of figures and tables, and the inclusion of appropriate emerging areas in this field.

Immunosuppression Guidance: The Agency is developing a guidance document for interpreting changes in the activity or histology of components of the immune system to identify hazards from exposure to environmental stressors. The immune system is a complex array of components that work both independently and in concert with other components to protect humans against infection and suppress the spread of neoplasia. Given this complexity, the Agency is soliciting input from the SAB on the direction and scope of the draft guidance document.

Microbial Risk Assessment Guidance Document: EPA is working with other government agencies to develop guidance for microbial risk assessment. The draft document is intended to reflect the issues and approaches of all contributing agencies, from which EPA will derive its own internal guidance, specific to the regulatory mandates of the program offices. The EPA has requested a consultation with the SAB EHHC on the content and direction of a draft microbial risk assessment guidance document to determine if its approach is appropriate and the content adequate.

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 on the topics included in this advisory activity and/or the group conducting the activity. *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 February 22, 2008, 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 in 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: January 25, 2008.

Anthony F. Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. E8–1913 Filed 1–31–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6695–5]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/*.

Weekly receipt of Environmental Impact Statements

Filed 01/21/2008 through 01/25/2008

Pursuant to 40 CFR 1506.9

EIS No. 20080028, Draft EIS, BLM, UT, West Tavaputs Plateau Natural Gas Full Field Development Plan, Develop the Natural Gas Resource on Leased and Unleased Lands, Carbon County, UT, Comment Period Ends: 05/01/2008, Contact: Brad Higdon 435–636–3613.

EIS No. 20080029, Final EIS, IBR, CA, Truckee River Operating Agreement (TROA) Modify Operations of Five Federal Two Non-Federal Reservoirs to Facilitate Distribution of Water, Truckee River Basin, Alpine, El Dorado, Nevada, Placer, Sierra Counties, CA and Carson City, Churchill Douglas, Lyon, Pershing, Storey, and Washoe Counties, NV, Wait Period Ends: 03/04/2008, Contact: Kenneth Parr 775–882–3436.

EIS No. 20080030, Final EIS, BLM, MT, Upper Missouri River Breaks National Monument Resource Management Plan, Implementation, Blaine, Chouteau, Fergus and Phillips Counties, MT, Wait Period Ends: 03/04/2008, Contact: Jerry Majerus 202–452–5112.

EIS No. 20080031, Draft EIS, AFS, MN, Glacier Project, To Maintain and Promote Native Vegetation, Communities that are Diverse, Productive, Healthy, Implementation, Superior National Forest, Kawishiwi Ranger District, St. Louis and Lake Counties, MN, Comment Period Ends: 03/17/2008, Contact: Susan Duffy 218–365–2097.

EIS No. 20080032, Draft EIS, AFS, CO, Durango Mountain Resort Improvement Plan, Special-Use-Permits, Implementation, San Juan National Forest, La Plata and San Juan Counties, CO, Comment Period Ends: 03/17/2008, Contact: Richard Speegle 970–375–3310.

EIS No. 20080033, Final EIS, BLM, CA, Truckhaven Geothermal Leasing Area, Addresses Leasing of Geothermal Resources, El Centro Field Office, Imperial County, CA, Wait Period Ends: 03/04/2008, Contact: Sandra McGinnis 916–985–4474.

EIS No. 20080034, Final EIS, FHW, NH, Spaulding Turnpike Improvements Project, Reconstruction and Widening of a 3.5-mile Section from U.S. Route 4 and NH Route 16, U.S. Coast Guard Bridge Permit, NPDES Permit and U.S. Army COE Section 404 Permit, Town of Newington, City of Dover, Strafford and Rockingham Counties, NH, Wait Period Ends: 03/04/2008, Contact: William F. O'Donnell, P.E. 603–228–3057 Ext. 101.

Amended Notices

EIS No. 20070453, Draft EIS, BLM, UT, Monticello Field Office Resource Management Plan, To Guide the Management of Public Land, Southern two-thirds of San Juan County and small portion on the Northern boundary within Grand County, UT, Comment Period Ends: 02/08/2008, Contact: Gary Torres 435–587–1524.

Revision to FR Notice Published 11/02/2007: Extending Comment Period from 01/30/2008 to 02/08/2008.

Dated: January 29, 2008.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. E8–1854 Filed 1–31–08; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 15, 2008.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Glover Loftin, to acquire voting shares of Capital Bancorp, Inc., and thereby indirectly acquire voting shares of Commercial Capital Bank, all of Delhi, Louisiana.

Board of Governors of the Federal Reserve System, January 28, 2008.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E8–1817 Filed 1–31–08; 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 applications 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 February 25, 2008.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Community Bankers Acquisition Corp., Great Falls, Virginia (to be renamed Community Bankers Trust Corporation), to acquire 100 percent of the voting securities of BOE Financial Services of Virginia, Inc., and thereby indirectly acquire Bank of Essex, both of Tappahannock, Virginia.

B. Federal Reserve Bank of Chicago (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. NRBC Holding Corporation, to become a bank holding company by acquiring 100 percent of the voting shares of The National Republic Bank of Chicago, both of Chicago, Illinois.

Board of Governors of the Federal Reserve System, January 28, 2008.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E8–1816 Filed 1–31–08; 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 applications 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 February 19, 2008.

A. Federal Reserve Bank of Atlanta (David Tatum, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Franklin Bancshares, Inc., to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Franklin, both of Meadville, Mississippi.

Board of Governors of the Federal Reserve System, January 29, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–1849 Filed 1–31–08; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

Public Building Service; Notice of Availability; Final Master Site Plan and Final Environmental Impact Statement for the Denver Federal Center, Lakewood, CO

AGENCY: Public Building Service, General Services Administration.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, and the President's Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), as implemented by General Services Administration (GSA) Order PBS P 1095.4D, GSA announces its Notice of Availability (NOA) of the Final Master Site Plan Final Environmental Impact Statement (FEIS) for the Denver Federal Center in Lakewood, Colorado. GSA proposes to implement a Master Site Plan for the Denver Federal Center, a federal facility, that addresses opportunities for future site redevelopment. The Draft Environmental Impact Statement presented two action alternatives, the Federal Quad Alternative and the Federal Mall Alternative; and a No Action Alternative. Subsequent to public review and comment, GSA determined that the Federal Quad Alternative, with modifications, would be the preferred alternative. The Federal Quad Alternative, with modifications, is the concept identified in the Final Master Site Plan.

DATES: GSA will execute a Record of Decision (ROD) based on the FEIS no sooner than March 3, 2008, or 30 days after the date of publication of this Notice of Availability in the **Federal Register** and after publication of the related notice by the Environmental Protection Agency.

ADDRESSES: To obtain copies of the Master Site Plan and FEIS, contact Lisa Dorsey Wild (formerly Morpurgo), Senior Project Manager, at the U.S. General Services Administration, Rocky Mountain Region, Denver Federal Center Service Center (8PD), P.O. Box 25546, Building 41, Denver Federal Center, Denver, CO, 80225–0546. Or visit the Web site at *http://www.gsa.gov/dfcsiteplan* and follow the instructions.

FOR FURTHER INFORMATION CONTACT: Ms. Lisa Dorsey Wild at (303) 236.8000 ext. 5039, by fax at 303–236–5328, e-mail at *dfcsiteplan@gsa.gov*, or mail at the above-listed address.

SUPPLEMENTARY INFORMATION: The Denver Federal Center is a 640-acre secured federal facility operated by

GSA. The Federal Center was acquired in 1941 by the U.S. government and is currently used for office, research, and administrative purposes by 26 federal agencies. There are approximately 4 million square feet of space in approximately 50 active buildings at the Federal Center, and there are approximately 6,000 on-site employees. The site, formerly part of unincorporated Jefferson County, Colorado, was recently annexed into the City of Lakewood. Annexation has no affect on the federal ownership or management of the site. GSA recently sold 65 of the facility the City of Lakewood through the federal land disposal process for construction of an inter-modal transit station and relocation of St. Anthony Hospital. GSA proposes to implement a new Master Site Plan for the Federal Center that will address new opportunities for site development. The FEIS, prepared to comply with the National Environmental Policy Act (NEPA), evaluates the proposed Master Site Plan alternatives and identifies the environmental effects associated with implementing the proposed alternatives. The Draft Master Site Plan and draft Environmental Impact Statement released in April 2007, evaluated two action alternatives, the Federal Quad Alternative and the Federal Mall Alternative; and a No Action Alternative. Under the No Action Alternative, GSA would not implement a new Master Site Plan for the Federal Center. Though currently planned upgrades to site infrastructure would move forward contingent upon funding, existing resources would not be leveraged to attract capital to the site, a new vision for growth would not be established, and the value and appeal of the Federal Center site would not be maximized. Under the No Action alternative, it would become increasingly difficult to maintain the resources on the site to serve Federal tenants and overall community needs. During the public review and comment period conducted between May and June 2007, over 300 hundred individual comments were received from 198 tenants, neighbors, groups, city, state, and federal offices. The Federal Quad concept, with modifications, is identified in the Final Master Site Plan and as the preferred alternative named in the FEIS. The defining characteristic of the Federal Quad Alternative is the central ''Quad'' that would be located in the center of the Federal Center site. The enhanced streetscapes throughout the campus would encourage area employees and residents to walk to and from transit and into adjacent districts. The Quad would be the heart of the plan and would be woven into the fabric of the surrounding neighborhoods and commercial districts via road and land use connections. The Quad would be surrounded by complementary office buildings, including secure federal buildings, non-secure federal buildings, and research buildings. A total of 227 acres (or approximately 36 percent of the total site) would be designated for open space use. The Federal Quad Alternative includes a development plan with approximately 3.6 million gross square feet of new development, plus 1,400 residential units, organized around a formal open space/park area that suggests a university campus setting. The primary change in this alternative between the Draft Master Site Plan and the Final is additional residential units in the northwest area of the site in the vicinity of the anticipated transit-orientated development and intermodal station. The modified Federal Quad Alternative as presented in the Final Master Site Plan for the Federal Center reflects GSA's preferred development strategy.

Dated: January 24, 2008.

Steven M. Burke,

Acting Director, General Services Administration, DFC Service Center, PBS, Rocky Mountain Region.

[FR Doc. E8–1908 Filed 1–31–08; 8:45 am]

BILLING CODE 6820–BK–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–R–50]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medical Records Review under the Prospective Payment System (PPS) and Supporting Regulations in 42 CFR 412.40–412.52 *Use:* The Social Security Amendments of 1983 (Pub. L. 98–21), requires quality improvement organization (QIO) review of medical services provided to Medicare beneficiaries. Review of services under the QIO program can be accomplished by individual case review and the Clinical Data Abstraction Centers (CDACs). Accordingly, QIOs must review, at the direction of CMS: (1) All anti-dumping referrals; (2) beneficiary complaints involving quality issues; (3) potential gross and flagrant violations of unnecessary admission concerns identified during project data collection; (4) requests from hospitals for higher-weighted DRG adjustments; (5) hospital and managed care plan issued notices of non-coverage; (6) specific codes for assistants at cataract surgery; and (7) cases referred by CMS, the Office of the Inspector General, the Department of Justice, the managed care appeals contractor, intermediaries, carriers, or the CDACs. *Form Number:* CMS–R–50 (OMB# 0938–0359); *Frequency:* Yearly; *Affected Public:* Private sector—Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 6,100; *Total Annual Responses:* 276,500; *Total Annual Hours:* 8,280.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by April 1, 2008:

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or

Submission'' or ''More Search Options'' to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, *Attention:* Document Identifier/OMB Control Number _____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: January 25, 2008.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E8–1810 Filed 1–31–08; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

President's Committee for People With Intellectual Disabilities; Notice of Quarterly Meeting

AGENCY: President's Committee for People with Intellectual Disabilities (PCPID); Administration for Children and Families; Department of Health and Human Services.

ACTION: Notice of Quarterly Meeting.

DATES: February 15, 2008, from 3:30 p.m. to 5:30 p.m. EST. The meeting will be conducted via conference call and will be open to the public using the dial-in information provided below.

ADDRESSES: The conference call may be accessed on the date and time indicated by dialing 888–677–5720, passcode: 1397797.

Agenda: PCPID will meet to finalize the 2007 Report to the President and to hear a briefing on the final report of the Ticket to Work and Work Incentives Advisory Panel.

FOR FURTHER INFORMATION CONTACT: Sally D. Atwater, Executive Director, President's Committee for People with Intellectual Disabilities, The Aerospace Center, Second Floor, West, 370 L'Enfant Promenade, SW., Washington, DC 20447. Telephone: 202–619–0634, Fax: 202–205–9591. E-mail: *satwater@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: PCPID acts in an advisory capacity to the President and the Secretary of Health and Human Services on a broad range of topics relating to programs, services and supports for persons with intellectual disabilities. PCPID, by Executive Order, is responsible for evaluating the adequacy of current practices in programs, services and supports for persons with intellectual disabilities, and for reviewing legislative proposals that impact the quality of life experienced by citizens with intellectual disabilities and their families.

Dated: January 25, 2008.

Sally D. Atwater,

Executive Director, President's Committee for People with Intellectual Disabilities.

[FR Doc. E8–1809 Filed 1–31–08; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Notification from Industry Organizations Interested in Participating in the Selection Process for a Nonvoting Industry Representative on the Blood Products Advisory Committee and Request for Nominations for a Nonvoting Industry Representative on the Blood Products Advisory Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting that any industry organizations interested in participating in the selection of a nonvoting industry representative to serve on the Blood Products Advisory Committee, Center for Biologics Evaluation and Research (CBER), notify FDA in writing. A nominee may either be self-nominated or nominated by an organization to serve as a nonvoting industry representative. Nominations will be accepted for an upcoming vacancy on September 30, 2008, effective with this notice.

DATES: Any industry organization interested in participating in the selection of an appropriate nonvoting member to represent industry interests must send a letter stating the interest to FDA by March 3, 2008, for vacancies listed in the notice. Concurrently, nomination material for prospective candidates should be sent to FDA by March 3, 2008.

ADDRESSES: All letters of interest and nominations should be submitted in writing to Donald W. Jehn (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Donald W. Jehn, Division of Scientific Advisors and Consultants, Center for Biologics Evaluation and Research, Food and Drug Administration (HFM–71), 1401 Rockville Pike, Rockville, MD 20892, 301–827–1277, *donald.jehn@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The agency requests nominations for a nonvoting industry representative to the Blood Products Advisory Committee.

I. Function

The Blood Products Advisory Committee reviews and evaluates available data concerning the safety, effectiveness, and appropriate use of blood products derived from blood and serum or biotechnology which are intended for the use in the diagnosis, prevention, or treatment of human diseases, and, as required, any other product for which FDA has regulatory responsibility. The committee also advises the Commissioner of Food and Drugs (the Commissioner) on its findings regarding the safety, effectiveness, and labeling of the products, clinical and laboratory studies involving such products, the affirmation or revocation of biological product licenses, and on the quality and relevance of FDA's research program which provides the scientific support for regulating these agents.

II. Selection Procedure

Any blood products industry, association, or organization interested in the selection of an appropriate nonvoting member to represent industry interests should send a letter stating that interest to the FDA contact (see **FOR FURTHER INFORMATION CONTACT**) within 30 days of publication of this document (see **DATES**). Within the subsequent 30 days, FDA will send a letter to each organization that has expressed an interest, attaching a complete list of all such organizations and a list of all nominees along with their current resumes. The letter will also state that it is the responsibility of the interested organizations to confer with one another and to select a primary and alternate candidate, within 60 days after the receipt of the FDA letter, and the primary candidate will serve as the nonvoting member to represent industry interests for the Blood Products Advisory Committee. The interested organizations are not bound by the list of nominees in selecting a candidate. However, if no individual is selected within 60 days, the Commissioner will select the nonvoting member to represent industry interests.

III. Application Procedure

Individuals may self nominate and/or an organization may nominate one or more individuals to serve as a nonvoting

industry representative. A current curriculum vitae and the name of the committee of interest should be sent to the FDA contact person (see **FOR FURTHER INFORMATION CONTACT**) within 30 days (see **DATES**). FDA will forward all nominations to the organizations expressing interest in participating in the selection process for the committee (persons who nominate themselves as nonvoting industry representatives will not participate in the selection process).

FDA has a special interest in ensuring that women, minority groups, individuals with physical disabilities, and small businesses are adequately represented on its advisory committees, and therefore, encourages nominations for appropriately qualified candidates from these groups.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: January 24, 2008.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E8–1815 Filed 1–31–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Vaccines and Related Biological Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Vaccines and Related Biological Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on February 20, 2008, from 8:30 a.m. to approximately 4 p.m., and on February 21, 2008 from 8:30 a.m. to approximately 4:30 p.m.

Location: Hilton Hotel DC North/ Gaithersburg, 620 Perry Pkwy., Gaithersburg, MD 20877.

Contact Person: Christine Walsh or Denise Royster, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512391. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On February 20, 2008, the committee will discuss and make recommendations on a rotavirus vaccine manufactured by GlaxoSmithKline Biologicals. On February 21, 2008, in the morning, the committee will discuss the selection of strains to be included in the influenza vaccine for the 2008—2009 influenza season. In the afternoon, the committee will discuss clinical development of influenza vaccines for pandemic and pre-pandemic uses.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the year 2008 and scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before February 13, 2008. Oral presentations from the public will be scheduled between approximately 1 p.m. and 1:30 p.m. on February 20, 2008, and approximately 11:20 a.m. and 11:50 a.m. and 2:45 p.m. and 3:15 p.m. on February 21, 2008. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before February 6, 2008. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by February 7, 2008.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Christine Walsh or Denise Royster at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/oc/advisory/default.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 24, 2008.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E8–1889 Filed 1–31–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, February 22, 2008, 8 a.m. to February 22, 2008, 5 p.m., Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007, which was published in the **Federal Register** on January 22, 2008, 73 FR 3733–3735.

The meeting will be held February 21, 2008, 6 p.m. to February 22, 2008, 7 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: January 25, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 08–435 Filed 1–31–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Sensory and Memory.
Date: February 11, 2008.
Time: 1 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).
Contact Person: Christine L. Melchior, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, (301) 435–1713, *melchioc@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Endometrium.
Date: February 15, 2008.
Time: 11 a.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).
Contact Person: Abubakar A. Shaikh, DVM, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6168, MSC 7892, Bethesda, MD 20892, (301) 435–1042, *shaikha@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Development Methods of In Vivo Imaging and Bioengineering Research.
Date: February 15–16, 2008.
Time: 2 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Bahia Resort Hotel, 998 West Mission Bay Drive, Del Mar, San Diego, CA 92109.
Contact Person: Behrouz Shabestari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, MSC 7854, Bethesda, MD 20892, (301) 435–2409, *shabestb@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Prion Diseases.
Date: February 20, 2008.
Time: 11 a.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).
Contact Person: Rossana Berti, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3191, MSC 7846, Bethesda, MD 20892, (301) 402–6411, *bertiros@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Biophysical and Physiological Neuroscience.
Date: February 20–21, 2008.
Time: 6 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.
Contact Person: Michael A. Lang, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7850, Bethesda, MD 20892, (301) 435–1265, *langm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts: GCMB Study Section.
Date: February 26, 2008.
Time: 11:30 a.m. to 2:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).
Contact Person: Patricia Greenwel, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2174, MSC 7818, Bethesda, MD 20892, (301) 435–1169, *greenwep@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, LIRR Member Conflicts.
Date: February 26, 2008.
Time: 3 p.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).
Contact Person: George M. Barnas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, (301) 435–0696, *barnasg@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Enzyme and Gene Evolution.
Date: February 26, 2008.
Time: 3 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).
Contact Person: Richard A. Currie, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1108, MSC 7890, Bethesda, MD 20892, (301) 435–1219, *currieri@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, LIRR and RIBT Member Conflicts.
Date: February 28, 2008.
Time: 1 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).
Contact Person: George M. Barnas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, (301) 435–0696, *barnasg@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts: DIG IRG: Inflammation/Host-Defense Mechanisms/Cell Injury.
Date: February 29, 2008.
Time: 12 p.m. to 2:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).
Contact Person: Patricia Greenwel, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2174, MSC 7818, Bethesda, MD 20892, (301) 435–1169, *greenwep@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Infectious Agent Detection and Diagnosis.
Date: March 3, 2008.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Doubletree Hotel & Executive Meeting Center, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Fouad A. El-Zaatari, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3206, MSC 7808, Bethesda, MD 20814–9692, (301) 435–1149, *elzaataf@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Biological Chemistry and Macromolecular Biophysics SBIR/STTR Grant Applications.
Date: March 3, 2008.
Time: 8:30 a.m. to 6:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Beacon Hotel and Corporate Quarters, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Sergei Ruvinov, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, (301) 435–1180, *ruvinser@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR 06–293–Quick Trial on Imaging and Image-guide Intervention.

Date: March 4, 2008.

Time: 11 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting).

Contact Person: John Firrell, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5213, MSC 7854, Bethesda, MD 20892, (301) 435–2598, *firrellj@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS Molecular and Cellular Biology Study Section.

Date: March 5, 2008.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Suites Palm Springs, 285 North Palm Canyon Drive, Palm Springs, CA 92262.

Contact Person: Kenneth A. Roebuck, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5214, MSC 7852, Bethesda, MD 20892, (301) 435–1166, *roebuckk@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS Discovery and Development of Therapeutics Study Section.

Date: March 5, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Suites Palm Springs, 285 North Palm Canyon Drive, Palm Springs, CA 92262.

Contact Person: Shiv A. Prasad, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, (301) 443–5779, *prasads@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Molecular, Cellular and Developmental Neurobiological Small Business Applications.

Date: March 5, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Michael A. Lang, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7850, Bethesda, MD 20892, (301) 435–1265, *langm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, RIBT Member Conflicts.

Date: March 5, 2008.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: George M. Barnas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, (301) 435–0696, *barnasg@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Non-HIV Anti-Infective Therapeutics.

Date: March 6, 2008.

Time: 7 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: State Plaza Hotel, 2117 E Street, NW., Washington, DC 20037.

Contact Person: Rossana Berti, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3191, MSC 7846, Bethesda, MD 20892, (301) 402–6411, *bertiros@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Musculoskeletal Rehabilitation SBIR.

Date: March 6–7, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892, (301) 435–1786, *pelhamj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neurodevelopment, Synaptic Plasticity and Neurodegeneration.

Date: March 6–7, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Vilen A. Movsesyan, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040M, MSC 7806, Bethesda, MD 20892, (301) 402–7278,*movsesyanv@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Disease Prevention, Psychological and Social.

Date: March 6–7, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting).

Contact Person: Karen Lechter, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3128, MSC 7759, Bethesda, MD 20892, (301) 496–0726, *lechterk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts: Animal Ethology and Learning.

Date: March 6–7, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting).

Contact Person: Maribeth Champoux, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3146, MSC 7759, Bethesda, MD 20892, (301) 594–3163, *champoum@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, RIBT Member Conflicts II.

Date: March 6, 2008.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: George M. Barnas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, (301) 435–0696, *barnasg@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Health and Health Related Behavior of Individuals and Populations Fellowship Meeting.

Date: March 6–7, 2008.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Hotel, 1001 14th Street, NW., Washington, DC 20005.

Contact Person: J. Fernando Arena, MD, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3135, MSC 7770, Bethesda, MD 20892, (301) 435–1735, *arenaj@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Food Safety, non-HIV Infectious Agents Sterilization and Bioremediation.

Date: March 7, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting).

Contact Person: Fouad A. El-Zaatari, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3206, MSC 7808, Bethesda, MD 20814–9692, *elzaataf@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 25, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 08–438 Filed 1–31–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of 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 Center for Research Resources Initial Review Group, Research Centers in Minority Institutions and Institutional Development Award Review Committee. RCMI and C.O.B.R.E Type I/ Parent Mtg.

Date: March 25–26, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Linda C. Duffy, PhD, Scientific Review Officer, Office of Review, National Center for Research Resources, National Institutes of Health, 6701 Democracy Blvd., 1 Democracy Plaza, Rm. 1082, MSC 4874, Bethesda, MD 20892–4874, (301) 435–0810, *duffy@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS)

Dated: January 25, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 08–442 Filed 1–31–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of 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 Center for Research Resources Special Emphasis Panel, Conferences and Scientific Meetings.

Date: February 28, 2008.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Steven Birken, PhD, Scientific Review Officer, Office of Review, National Center for Research Resources, National Institutes of Health, 6701 Democracy Blvd., 10th Fl., Bethesda, MD 20892, (301) 435–1078, *birkens@mail.nih.gov.*

Name of Committee: National Center for Research Resources Special Emphasis Panel, Research Model Information/RFP No. NHLBI–RR–08–18.

Date: March 26, 2008.

Time: 8 a.m. to 7 p.m.

Agenda: To review and evaluate contract proposals.

Place: Hilton Washington/Rockville, Double Tree Name Changed, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Guo Zhang, PhD, MD, Scientific Review Officer, National Center for Research Resources, or National Institutes of Health, 6701 Democracy Blvd., 1 Democracy Plaza, Room 1064, MSC 4874, Bethesda, MD 20892–4874, (301) 435–0812, *zhanggu@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS)

Dated: January 25, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 08–443 Filed 1–31–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center on Minority Health and Health Disparities; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Minority Health and Health Disparities.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Minority Health and Health Disparities.

Date: February 26, 2008.

Closed: 8 a.m. to 9:30 a.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Open: 9:30 a.m. to 5 p.m.

Agenda: The agenda will include opening remarks, administrative matters, Director's Report, NCMHD Health Disparities update, Scientific Programs Highlight, and other business of the Council.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Donna Brooks, Asst. Director for Administration, National Center on Minority Health and Health Disparities, National Institutes of Health, 6707 Democracy Blvd, Suite 800, Bethesda, MD 20892, (301) 435–2135, *brooksd@ncmhd.nih.gov.*

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the

meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Dated: January 25, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 08–441 Filed 1–31–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed 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 Heart, Lung, and Blood Institute Special Emphasis Panel, Conference Grants (R13's).

Date: March 5, 2008.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Chang Sook Kim, PhD, Scientific Review Administrator, Review Branch, DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7190, Bethesda, MD 20892, (301) 435–0287, *carolko@mail.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Pathway to Independence Awards (K99's).

Date: March 11–12, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton National Hotel, 900 S. Orme Street, Arlington, VA 22204.

Contact Person: William J. Johnson, PhD, Scientific Review Administrator, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7178, Bethesda, MD 20892–7924, (301) 435–0725, *johnsonw@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 25, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 08–445 Filed 1–3–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, ''The Mucosal Immune Barrier''.

Date: February 27, 2008.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Rm. 3256, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Ileana M. Ponce-Gonzalez, MD, MPH, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, (301) 451–3679, *ipgonzalez@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 25, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 08–432 Filed 1–31–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental and Craniofacial Research; 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 Dental and Craniofacial Research Special Emphasis Panel, Review RFA DE–08–005 R21s.

Date: March 13, 2008.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Jonathan Horsford, PhD, Scientific Review Officer, NIDCR, 45 Center Drive, 4AN–24E, Bethesda, MD 20892, (301) 594–4859, *horsforj@mail.nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, Review R21s.

Date: March 24, 2008.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Mary Kelly, Scientific Review Officer, Scientific Review Branch, National Inst of Dental & Craniofacial Research, NIH 6701 Democracy Blvd, room 672, MSC 4878, Bethesda, MD 20892–4878, (301) 594–4809, *mary_kelly@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and

Disorders Research, National Institutes of Health, HHS)

Dated: January 25, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 08–433 Filed 1–31–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 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 Diabetes and Digestive and Kidney Diseases Initial Review Group, Digestive Diseases and Nutrition C Subcommittee.

Date: March 5–6, 2008.

Open: March 5, 2008, 8 a.m. to 8:30 a.m.

Agenda: To review procedures and discuss policy.

Place: Legacy Hotel/Ramada Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Closed: March 5, 2008, 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Legacy Hotel/Ramada Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Closed: March 6, 2008, 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Legacy Hotel/Ramada Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Dan E. Matsumoto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 749, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8894, *matsumotod@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group, Kidney, Urologic and Hematologic Diseases D Subcommittee.

Date: March 5–6, 2008.

Open: March 5, 2008, 8 a.m. to 8:30 a.m.

Agenda: To review procedures and discuss policy.

Place: Legacy Hotel/Ramada Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Closed: March 5, 2008, 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Legacy Hotel/Ramada Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Closed: March 6, 2008, 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Legacy Hotel/Ramada Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Barbara A Woynarowska, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 749, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 402–7172, *woynarowskab@niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: January 25, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 08–434 Filed 1–31–08; 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 Initial Review Group; Developmental Biology Subcommittee

Date: February 28–29, 2008.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Norman Chang, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 496–1485, *changn@mail.nih.gov.*

(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: January 25, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 08–436 Filed 1–31–08; 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; Health, Behavior, and Context Subcommittee.

Date: February 29, 2008.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Michele C. Hindi-Alexander, PhD, Division of Scientific Review, National Institutes of Health, National Institute for Child Health and Human Development, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20812–7510, (301) 435–8382, *hindialm@mail.nih.gov.*

(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: January 25, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 08–437 Filed 1–31–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Microbiology, Infectious Diseases and AIDS Initial Review Group, Microbiology and Infectious Diseases Research Committee.

Date: February 28–29, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Hotel, 8777 Georgia Ave., Silver Spring, MD 20910.

Contact Person: Annie Walker-Abbey, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIH/NIAID/DHHS, 6700B Rockledge Drive, Rm. 3126, Bethesda, MD 20892–7616, (301) 451–2671, *aabbey@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 25, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 08–439 Filed 1–31–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; 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 Environmental Health Sciences Special Emphasis Panel, Environmental Factors in Neurodegenerative Diseases.

Date: February 25–27, 2008.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn Durham/SouthPoint, 7007 Fayetteville Road, Durham, NC 27713.

Contact Person: Leroy Worth, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30/Room 3171, Research Triangle Park, NC 27709, (919) 541–0670, *worth@niehs.nih.gov.*

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Molecular Biomarkers Related to Cancer.

Date: February 26, 2008.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709. (Telephone Conference Call).

Contact Person: Sally Eckert-Tilotta, PhD, Scientific Review Administrator, Nat. Institute of Environmental Health Sciences, Office of Program Operations, Scientific Review Branch, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–1446, *eckertt1@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: January 25, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 08–444 Filed 1–31–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of Biotechnology Activities, Office of Science Policy, Office of the Director; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the National Science Advisory Board for Biosecurity (NSABB).

Under authority 42 U.S.C. 217a, section 222 of the Public Health Service Act, as amended, the Department of Health and Human Services established NSABB to provide advice, guidance and leadership regarding federal oversight of dual use research, defined as biological research with legitimate scientific purposes that could be misused to pose a biological threat to public health and/or national security.

The meeting will be open to the public, however, pre-registration is strongly recommended due to space limitations. Persons planning to attend should register online at *http://www.biosecurityboard.gov/meetings.asp* or by calling Capital Consulting Corporation (Contact: Saundra Bromberg at (301) 468–6004, ext. 406). Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should indicate these requirements upon registration.

Name of Committee: National Science Advisory Board for Biosecurity.

Date: February 27–28, 2008.

Open: 8:30 a.m. to 5:30 p.m.

Agenda: Presentations and discussions regarding: (1) United States Government consideration of NSABB policy recommendations; (2) strategies regarding Outreach and Education; (3) report on second International Roundtable and update on International Working Group; (4) public comments; and (5) and other business of the Board.

Place: The National Institutes of Health, 31 Center Drive, Building 31, C Wing, 6th Floor, Rooms 6–10, Bethesda, Maryland 20892.

Contact Person: Ronna Hill, NSABB Program Assistant, 6705 Rockledge Drive, Bethesda, Maryland 20892, (301) 496–9838.

This meeting will also be Web cast. The draft meeting agenda and other information about NSABB, including information about access to the Web cast and pre-registration, will be available at *http://www.biosecurityboard.gov/meeting.asp.* Please check the OBA Web site for updates. Times are approximate and subject to change.

Any member of the public interested in presenting oral comments at the meeting may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of an organization may submit a letter of intent, a brief description of the organization represented and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee. All written comments must be received by February 20, 2008 and should be sent via e-mail to *nsabb@od.nih.gov* with ''NSABB Public Comment'' as the subject line or by regular mail to 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892, Attention Ronna Hill. The statement should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Dated: January 25, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 08–440 Filed 1–31–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the laboratories currently certified to meet the standards of Subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908), on September 30, 1997 (62 FR 51118), and on April 13, 2004 (69 FR 19644).

A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://www.workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov.*

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh, Division of Workplace Programs, SAMHSA/CSAP, Room 2–1042, One Choke Cherry Road, Rockville, Maryland 20857; 240–276–2600 (voice), 240–276–2610 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Mandatory Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards that laboratories must meet in order to conduct drug and specimen validity tests on urine specimens for Federal agencies. To become certified, an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A laboratory must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Mandatory Guidelines dated April 13, 2004 (69 FR 19644), the following laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840 / 800–877–7016. (Formerly: Bayshore Clinical Laboratory)

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264.

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770 / 888–290–1150.

Aegis Sciences Corporation, 345 Hill Ave., Nashville, TN 37210, 615–255–2400. (Formerly: Aegis Analytical Laboratories, Inc.)

Baptist Medical Center-Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783. (Formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Reference Lab, 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917.

Diagnostic Services, Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 239–561–8200 / 800–735–5416.

Doctors Laboratory, Inc., 2906 Julia Drive, Valdosta, GA 31602, 229–671–2281.

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215–674–9310.

Dynacare Kasper Medical Laboratories*, 10150–102 St., Suite 200, Edmonton, Alberta, Canada T5J 5E2, 780–451–3702 / 800–661–9876.

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609.

Gamma-Dynacare Medical Laboratories*, A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630.

Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989 / 800–433–3823. (Formerly: Laboratory Specialists, Inc.)

Kroll Laboratory Specialists, Inc., 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130. (Formerly: Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288 / 800–800–2387.

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400 / 800–437–4986. (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900 / 800–833–3984.

(Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 13112 Evening Creek Drive, Suite 100, San Diego, CA 92128, 858–668–3710 / 800–882–7272. (Formerly: Poisonlab, Inc.)

Laboratory Corporation of America Holdings, 550 17th Ave., Suite 300, Seattle, WA 98122, 206–923–7020 / 800–898–0180. (Formerly: DrugProof, Division of Dynacare/Laboratory of Pathology, LLC; Laboratory of Pathology of Seattle, Inc.; DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042 / 800–233–6339. (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927 / 800–873–8845. (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)

MAXXAM Analytics Inc.*, 6740 Campobello Road, Mississauga, ON, Canada L5N 2L8, 905–817–5700. (Formerly: NOVAMANN (Ontario), Inc.)

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466 / 800–832–3244.

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295 / 800–950–5295.

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088.

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250 / 800–350–3515.

One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888–747–3774. (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory)

Oregon Medical Laboratories, 123 International Way, Springfield, OR 97477, 541–341–8092.

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942. (Formerly: Centinela Hospital Airport Toxicology Laboratory)

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991 / 800–541–7891x7.

Phamatech, Inc., 10151 Barnes Canyon Road, San Diego, CA 92121, 858–643–5555.

Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590 / 800–729–6432. (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600 / 877–642–2216. (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 866–370–6699 / 818–989–2521. (Formerly: SmithKline Beecham Clinical Laboratories)

S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300 / 800–999–5227.

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 574–234–4176 x276.

Southwest Laboratories, 4645 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040, 602–438–8507 / 800–279–0027.

Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–364–7400. (Formerly: St. Lawrence Hospital & Healthcare System)

St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052.

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 573–882–1273.

Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260.

US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, (301) 677–7085.

*The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 13, 2004 (69 FR 19644). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Elaine Parry,

Acting Director, Office of Program Services, SAMHSA.

[FR Doc. E8–1611 Filed 1–31–08; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Comment Request

ACTION: 60-day notice of information collection under review: national interest waivers; supplemental evidence to I–140 and I–485.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until April 1, 2008.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529.

Comments may also be submitted to DHS via facsimile to 202–272–8352, or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail add the USCIS File Number (OMB–22) in the subject box.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection: Extension of a currently approved collection.*

(2) *Title of the Form/Collection:* National Interest Waivers; Supplemental Evidence to I–140 and I–485.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No Agency Form Number; File No. OMB–22. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. The supplemental documentation will be used by the U.S. Citizenship and Immigration Services to determine eligibility for national interest waiver requests and to finalize the request for adjustment to lawful permanent resident status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 8,000 responses, two responses per respondent, at one (1) hour per response.

An estimate of the total public burden (in hours) associated with the collection: 16,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit the USCIS Web site at: *http://www.regulations.gov/search/index.jsp.*

We may also be contacted at: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529, Telephone number 202–272–8377.

Dated: January 28, 2008.

Stephen Tarragon,

Deputy Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E8–1909 Filed 1–31–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Request for Applicants for Appointment to the Departmental Advisory Committee on Commercial Operations of Customs and Border Protection and Related Homeland Security Functions (COAC)

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security (DHS).

ACTION: Committee Management; request for applicants for appointment to the Departmental Advisory Committee on Commercial Operations of Customs and Border Protection and Related Homeland Security Functions (COAC).

SUMMARY: U.S. Customs and Border Protection (CBP) is requesting individuals who are interested in serving on the Departmental Advisory Committee on Commercial Operations of Customs and Border Protection and Related Homeland Security Functions (COAC) to apply for appointment. COAC provides advice and makes recommendations to the Commissioner of CBP, Secretary of Homeland Security, and Secretary of the Treasury on all matters involving the commercial operations of CBP and related DHS functions.

DATES: Applications for membership should reach CBP on or before April 1, 2008.

ADDRESSES: If you wish to apply for membership, your application should be sent to CBP by one of the following methods:

- *E-mail: Traderelations@dhs.gov.*
- *Facsimile:* (202) 344–2064.
- *Mail:* Ms. Wanda J. Tate, Program Management Analyst, Office of International Affairs and Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 8.5C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Ms. Wanda J. Tate, Program Management Analyst, Office of International Affairs and Trade Relations, U.S. Customs and Border Protection, (202) 344–1440, Fax (202) 344–2064.

SUPPLEMENTARY INFORMATION: The Departmental Advisory Committee on Commercial Operations of Customs and Border Protection and Related Homeland Security Functions (COAC) is an advisory committee established in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C., app.).

Purpose and Objective: The purpose of the Committee is to provide advice to the Commissioner of Customs and Border Protection, the Secretary of Homeland Security, and the Secretary of the Treasury on all matters involving the commercial operations of Customs and Border Protection (CBP) and related functions within the Department of Homeland Security (DHS) or Treasury, and to submit an annual report to Congress describing its operations and setting forth any recommendations. The Committee provides a critical and unique forum for distinguished representatives of diverse industry sectors to present their views and advice directly to senior Treasury, DHS, and CBP officials. This is done on a regular basis in an open and candid atmosphere.

Balanced Membership Plans: The members will be selected by the Commissioner of CBP (subject to approval by the Secretary of Homeland Security and the Secretary of the Treasury) from representatives of the trade and transportation community that do business with CBP, or others who are directly affected by CBP commercial operations and related functions. In addition, members will represent major regions of the country, and, by statute, not more than ten of the Committee's members may be affiliated with the same political party.

Background

In the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203), Congress directed the Secretary of the Treasury to create an Advisory Committee on Commercial Operations of the U.S. Customs Service (now CBP). The Committee is to consist of twenty members drawn from industry sectors affected by CBP commercial operations with balanced political party affiliations. The Committee's first two-year charter was filed on October 17, 1988, and the Committee has been

renewed for subsequent two-year terms nine times since then.

With the creation of DHS, the Secretary of the Treasury delegated a joint chair and Committee management role to the Secretary of Homeland Security (see Treasury Department Order No. 100–16, 19 CFR Part 0 Appx.). In Delegation Number 7010.3 (May, 2006), the Secretary of Homeland Security delegated to the Commissioner of CBP the authority to preside jointly with Treasury over the meetings of the Committee, to make appointments (subject to approval of the Secretary of Homeland Security) to COAC jointly with Treasury, and to receive COAC advice.

It is expected that, during its eleventh two-year term, the Committee will consider issues relating to enhanced border and cargo supply chain security. COAC will continue to provide advice and report on matters such as CBP modernization and automation, informed compliance and compliance assessment, account-based processing, commercial enforcement and uniformity, international efforts to harmonize customs practices and procedures, strategic planning, northern border and southern border issues, and relationships with foreign customs authorities.

Committee Meetings

The Committee meets at least once each quarter, although additional meetings may be scheduled. Generally, every other meeting of the Committee may be held outside of Washington, DC, usually at a CBP port of entry.

Committee Membership

Membership on the Committee is personal to the appointee and is concurrent with the two-year duration of the charter for the eleventh term. Under the Charter, a member may not send an alternate to represent him or her at a Committee meeting. However, since Committee meetings are open to the public, another person from a member's organization may attend and observe the proceedings in a nonparticipating capacity. Regular attendance is essential; the Charter provides that a member who is absent for two consecutive meetings or two meetings in a calendar year shall be recommended for replacement on the Committee.

No person who is required to register under the Foreign Agents Registration Act as an agent or representative of a foreign principal may serve on this advisory committee.

Members who are currently serving on the Committee are eligible to re-apply for membership provided that they are not in their second consecutive term and that they have met attendance requirements. A new application letter (see **ADDRESSES** above) is required, but it may incorporate by reference materials previously filed (please attach courtesy copies).

Members will not be paid compensation by the Federal Government for their services with respect to the COAC.

Application for Advisory Committee Appointment

There is no prescribed format for the application. Applicants may send a letter describing their interest and qualifications and enclose a resume.

Any interested person wishing to serve on the Committee must provide the following:

- Statement of interest and reasons for application;
- Complete professional biography or resume;
- Political affiliation, in order to ensure balanced representation (mandatory). If no party registration or allegiance exists, indicate ''independent'' or ''unaffiliated''.

In addition, all applicants must state in their applications that they agree to submit to pre-appointment background and tax checks (mandatory). However, a national security clearance is not required for the position.

In support of the policy of DHS on gender and ethnic diversity, qualified women and members of minority groups are encouraged to apply for membership.

Dated: January 30, 2008.

W. Ralph Basham,

Commissioner, Customs and Border Protection.

[FR Doc. E8–1944 Filed 1–31–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5186–N–05]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: February 1, 2008.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7262, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: January 24, 2008.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. E8–1578 Filed 1–31–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5152–N–03]

Final Fair Market Rents for the Housing Choice Voucher Program and Moderate Rehabilitation Single Room Occupancy Program for Fiscal Year 2008; Revised for Selected Areas

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of Final Fair Market Rents (FMRs) for Fiscal Year 2008, Update.

SUMMARY: This notice updates the FMRs for Gulfport-Biloxi, MS, and Pascagoula, MS, to accommodate continuing rental market impacts of Hurricane Katrina.

EFFECTIVE DATE: February 1, 2008.

FOR FURTHER INFORMATION CONTACT: For technical information on the methodology used to develop FMRs or a listing of all FMRs, please call the HUD USER information line at (800) 245–2691 or access the information on the HUD Web site, *http://www.huduser.org/datasets/fmr.html.* Any questions related to use of FMRs or voucher payment standards should be directed to the respective local HUD program staff. Questions on how to conduct FMR surveys or further methodological explanations may be addressed to Marie L. Lihn or Lynn A. Rodgers, Economic and Market Analysis Division, Office of Economic Affairs, Office of Policy Development and

Research, telephone (202) 708–0590. Questions about disaster-related FMR exceptions should be referred to the respective local HUD office. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339. (Other than the HUD USER information line and TTY numbers, telephone numbers are not toll-free.)

Background

The coastal Mississippi rental housing markets identified in this notice experienced enormous impacts from Hurricane Katrina, with the loss of many rental housing units. On December 1, 2007, HUD took over day-to-day management of rental assistance payments for the 28,000 households in rental housing still displaced due to Hurricanes Katrina and Rita. Beginning January 2008, HUD will begin working with FEMA to transition eligible families out of travel trailers and into rental housing in the private market.

On March 1, 2008, the level of subsidy will begin to be reduced, which will gradually lead families toward independence. Program participants will pay a portion of the cost, which will begin at $50 per month and incrementally increase each month thereafter until the program concludes on March 1, 2009. Residents in the program will also receive case management services coordinated by PHAs to help them get back on their feet, including financial education, job training or other social services.

Families and individuals in the program will be given complete information, supportive services, resources and ample time to prepare themselves for the end of temporary, subsidized housing. Seniors and the disabled whose primary source of income is Supplemental Security Income or other fixed income that make them eligible to receive assistance under existing HUD programs will be protected. HUD, through its network of PHAs, will actively work to transition these individuals into its existing programs.

Although new rental stock is being built in the affected areas, it will take some time for sufficient numbers of units to be completed to stabilize the market. Many single-family homes in the Gulfport-Biloxi, MS, and Pascagoula, MS, areas that accepted vouchers were wiped out by Katrina and have not been rebuilt. The tight rental market has significantly increased pressure on rents in these two areas of Mississippi. High hazard insurance rates have sharply increased homeowners' and landlords' monthly insurance costs. Although the state has provided the State Wind Pool insurance to provide coverage to owners, this insurance is often two-to-three times higher than what was previously paid.

American Community Survey data for 2006 show that rents in these areas have increased substantially since 2005. These results are supported by extensive field work by HUD economists who have been researching local market conditions. In order to ensure the successful operation of HUD's regular voucher program as well as HUD's new responsibilities under the expanded Disaster Housing Assistance Program on the Mississippi Gulf Coast, HUD is increasing the Gulfport-Biloxi and Pascagoula fiscal year (FY) 2008 FMRs by 20 percent, effective immediately. The FMR increases provided, in combination with the continuation of flexibility for Public Housing Authorities to set payment standards up to 120 percent of FMR without HUD approval, are believed adequate to reflect current market circumstances and should cover at least part of the expected additional rent increases anticipated this year. The Department will continue to monitor this situation and modify FMRs if significant further rent increases occur.

The FY2008 FMRs for the affected areas are increased as follows:

2008 Fair market rent areas	Number of bedrooms				
	0	1	2	3	4
Gulfport-Biloxi, MS MSA	$655	$695	$811	$1,057	$1,086
Pascagoula, MS MSA	563	643	773	1,064	1,141

Dated: January 25, 2008.

Darlene F. Williams,

Assistant Secretary for Policy Development and Research.

[FR Doc. E8–1911 Filed 1–31–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5130–N–20]

Privacy Act of 1974; Notice of a Computer Matching Program Between the U.S. Department of Housing and Urban Development (HUD) and the U.S. Small Business Administration (SBA)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice of a Computer Matching Program between HUD and the SBA.

SUMMARY: In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988, as amended, (Pub. L. 100–503), and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs (54 FR 25818 (June 19, 1989)), and OMB Bulletin 89–22, ''Instructions on Reporting Computer Matching Programs to the Office of Management (OMB), Congress and the Public,'' HUD is issuing a public notice of its intent to conduct a recurring computer matching program with the SBA to utilize a computer information system of HUD, the Credit Alert Interactive Voice Response System (CAIVRS), with SBA's debtor files. HUD has revised the ''records to be matched'' section of this notice to reflect the new HUD Privacy Act Systems of Records involved in the matching program. This update does not change the authority and the objectives of the existing HUD and SBA matching program.

DATES: *Effective Date:* The effective date of the matching program shall begin March 3, 2008 or at least 40 days from the date copies of the signed (by HUD and SBA's Data Integrity Boards (DIBs) computer matching agreement are sent to the Office of Management and Budget (OMB) and Congress, whichever is later, providing no comments are received which would result in a contrary determination.

Comments Due Date: March 3, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and

copying between 8 a.m. and 5 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Contact the ''Recipient Agency'' Departmental Privacy Act Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4156, Washington, DC 20410, telephone number (202) 619–9057 or the ''Source Agency'' Chief Portfolio Management Division, Small Business Administration, 409 Third Street, SW., Suite 8300, Washington, DC 20416, telephone number (202) 205–7543. [These are not toll-free numbers.] A telecommunication device for hearing- and speech-impaired individuals (TTY) is available at (800) 877–8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: HUD's CAIVRS database includes delinquent debt information from the Departments of Education, Veterans Affairs, Justice and the United States Department of Agriculture. This match will allow prescreening of applicants for debts owed to or loans guaranteed by the Federal government to ascertain if the applicant is delinquent in paying a debt owed to or insured by the Federal government for HUD or SBA direct or guaranteed loans.

Before rating a loan, the lending agency and/or the authorized lending institution will be able to interrogate the CAIVRS debtor file which contains the Social Security Numbers (SSNs) of HUD's delinquent debtors and defaulters and defaulted debtor records of the SBA and verify that the loan applicant is not in default or delinquent on direct or guaranteed loans of participating federal programs of either agency. As a result of the information produced by this match, the authorized users may not deny, terminate, or make a final decision concerning any loan assistance to an applicant or take other adverse action against such applicant, until an officer or employee of such agency has independently verified such information.

Reporting of Matching Program

In accordance with Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988, as amended, and Office of Management and Budget Bulletin 89–22, ''Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public,'' copies of this notice and report are being provided to the Committee on Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget.

Authority

The matching program will be conducted pursuant to Public Law 100–503, ''The Computer Matching and Privacy Protection Act of 1988,'' as amended, and Office of Management and Budget (OMB) Circular A–129 (Revised November 2000), Policies for Federal Credit Programs and Non-Tax Receivables. One of the purposes of all Executive departments and agencies—including HUD—is to implement efficient management practices for Federal credit programs. OMB Circular A–129 was issued under the authority of the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Act of 1950, as amended; the Debt Collection Act of 1982, as amended by the Debt Collection Improvement Act of 1996; Section 2653 of Public Law 98–369; the Federal Credit Reform Act of 1990, as amended; the Federal Debt Collection Procedures Act of 1990, the Chief Financial Officers Act of 1990, as amended; Executive Order 8248; the Cash Management Improvement Act Amendments of 1992; and pre-existing common law authority to charge interest on debts and to offset payments to collect debts administratively.

Objectives To Be Met by the Matching Program

The matching program will allow SBA access to a system which permits prescreening of applicants for loans owed to or guaranteed by the Federal government to ascertain if the applicant is delinquent in paying a debt owed to or insured by the Government. In addition, HUD will be provided access to SBA debtor data for prescreening purposes.

Records To Be Matched

HUD will use records from its systems of records entitled, Single Family Insurance System CLAIMS Subsystem (HUD/SFH–02); Single Family Default Monitoring System (HUD/SFH–03); Single Family Mortgage Notes (HUD/HS–57); and the Debt Collection Asset Management System (HUD/HS–55). The debtor files for programs involved are included in these systems of records. HUD's debtor files contain information on borrowers and co-borrowers who are currently in default (at least 90 days delinquent on their loans or who have had their partial claim subordinate mortgage called due and payable and it has not been repaid in full); or who have any outstanding claims paid during the last three years on a Title II insured or guaranteed home mortgage loans; or individuals who had a claim paid in the last three years on a Title I loan.

The SBA will provide HUD with debtor files contained in its system of records entitled, Loan Case File, SBA 075. HUD is maintaining SBA's records only as a ministerial action on behalf of SBA, not as a part of HUD's system of records noted above. SBA's data contain information on individuals who have defaulted on their guaranteed loans. The SBA will retain ownership and responsibility for their system of records that they place with HUD. HUD serves only as a record location and routine use recipient for SBA's data.

Notice Procedures

HUD and the SBA will notify individuals at the time of application (ensuring that ''routine use'' appears on the application form) for guaranteed or direct loans that their records will be matched to determine whether they are delinquent or in default on a Federal debt. HUD and the SBA will also publish notices concerning routine use disclosures in the **Federal Register** to inform individuals that a computer match may be performed to determine a loan applicant's credit status with the Federal government.

Categories of Records/Individuals Involved

The debtor records include these data elements: SSN, claim number, program code, and indication of indebtedness. Categories of records include: Records of claims and defaults, repayment agreements, credit reports, financial statements, and records of foreclosures. Categories of individuals include: HUD records cover former mortgagors and purchasers of HUD-owned properties, and home improvement loan debtors who are delinquent or in default (at least 90 days delinquent on their loans or who have had their partial claim subordinate mortgage called due and payable and it has not been paid in full); or who have any outstanding claims paid during the last three years on a Title II insured or guaranteed home mortgage loans; or individuals who has a claim paid in the last three years on a Title I loan. SBA records cover former borrowers and purchasers who have defaulted on business loans (including disaster business) loan/guarantors that have received 60-day notification letters that their obligations may be referred to Treasury for offset or cross-servicing.

Period of the Match

Matching is expected to begin at least 40 days from the date copies of the signed (by HUD and SBA's DIBs) computer matching agreement are sent

to Congress and OMB or at least 30 days from the date this notice is published in the **Federal Register**, whichever is later, providing no comments are received which would result in a contrary determination.

The matching program will be in effect and continue for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other in writing to terminate or modify the agreement.

Dated: January 18, 2008.

Stanley Buch,

Acting Deputy Chief Information Officer.

[FR Doc. E8–1697 Filed 1–31–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[1220–AL]

Notice of Availability of Truckhaven Geothermal Leasing Area Final Environmental Impact Statement, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321 *et seq.*) and the Federal Land Policy and Management Act of 1976 (FLPMA, 43 U.S.C. 1701 *et seq.*),the Bureau of Land Management (BLM) has prepared a Final Environmental Impact Statement (EIS) for the Truckhaven Geothermal Leasing Area, Imperial County, managed by the El Centro Field Office.

DATES: BLM will issue a Record of Decision (ROD) 30 days after the date of publication of this notice (40 CFR 1506.10(b)(2)).

ADDRESSES: A copy of the FEIS has been sent to affected Federal, State, and local government agencies and interested parties. The document will be available electronically at the following Truckhaven Geothermal Leasing Area, Imperial County EIS Web site: *http://www.ca.blm.gov/elcentro*. Copies of the FEIS will be available for public inspection at the following locations:

- Bureau of Land Management, California State Office, 2800 Cottage Way, Suite W–1834, Sacramento, CA 95825.
- Bureau of Land Management, El Centro Field Office, 1661 S. 4th Street, El Centro, CA 92243.
- Bureau of Land Management, California Desert District, 22835 Calle San Juan De Los Lagos, Moreno Valley, CA 92553

FOR FURTHER IINFORMATION CONTACT: John Dalton, Truckhaven Geothermal Leasing Area EIS Project Manager, at (951) 691–5200, Bureau of Land Management, 22835 Calle San Juan De Los Lagos, Moreno Valley, CA 92553; *john_dalton@ca.blm.gov*.

SUPPLEMENTARY INFORMATION: The Truckhaven Geothermal Leasing Area encompasses approximately 14,731 acres of Federal minerals in western Imperial County, California, north of State Route 78 and generally west and south of County Highway S–22. The area is part of the California Desert Conservation Area. The main issues addressed in the Final EIS are geothermal resource leasing, recreation, and special status species. Three alternatives are analyzed in the Final EIS: (1) No action, which would not lease any geothermal resources; (2) leasing only lands with existing noncompetitive lease applications; and (3) the proposed action, which would offer all BLM managed lands within this area for lease, subject to certain stipulations and mitigation measures to be applied at the development stage. Comments on the Truckhaven Geothermal Leasing Area Draft EIS received from the public and via internal BLM review were incorporated into the Final EIS. These comments resulted in corrections, clarifying text, and the addition of new data used in the analysis of impacts. The Final EIS includes measures to mitigate impacts to off-highway vehicle restriction. The Final EIS addresses comprehensive, long-range decisions for the use and management of geothermal resources in the planning area and management of other resources and uses potentially affected by geothermal resource management decisions. The reasonable foreseeable development scenario for the area projects a potential for two 25–Megawatt geothermal power plants, with a total surface disturbance of 502.25 acres of the 14,731 acres proposed for leasing that are administered by the BLM. The ROD for this project will address only BLM's decisions for public lands and resources administered by the BLM.

Alan Stein,

Acting Field Manager.

[FR Doc. E8–1763 Filed 1–31–08; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–066–07–1610–DQ–024E]

Notice of Availability of Proposed Resource Management Plan and Final Environmental Impact Statement for the Upper Missouri River Breaks National Monument, Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321 *et seq.*) and the Federal Land Policy and Management Act of 1976 (FLPMA, 43 U.S.C. 1701 *et seq.*), the Bureau of Land Management (BLM) has prepared a Proposed Resource Management Plan (PRMP) and Final Environmental Impact Statement (EIS) for the Upper Missouri River Breaks National Monument.

DATES: The BLM Planning Regulations (43 CFR 1610.5–2) state that any person who participated in the planning process, and has an interest which is or may be adversely affected, may protest the BLM's approval of an RMP. Protests must be filed within 30 days of the date that the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register**. Instructions for filing protests are described in the Dear Reader letter of the Proposed RMP and Final EIS for the Upper Missouri River Breaks National Monument and in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Jerry Majerus, RMP Project Manager, Bureau of Land Management, 920 Northeast Main Street, P.O. Box 1160, Lewistown, MT 59457; or by telephone at (406) 538–1924.

SUPPLEMENTARY INFORMATION: The Upper Missouri River Breaks National Monument is located in northcentral Montana in Blaine, Chouteau, Fergus, and Phillips Counties. The planning area addressed in the Proposed RMP comprises about 375,000 acres of public land and 42,800 acres of existing oil and gas leases administered by the BLM Lewistown Field Office. The State of Montana and Blaine, Chouteau, Fergus, and Phillips Counties participated in development of the plan as cooperating agencies. The Proposed RMP and Final EIS were developed through collaborative planning and consider six alternatives. The Proposed RMP and Final EIS address the following six major questions: (1) How will human

activities and uses be managed? (2) What facilities and infrastructure are appropriate to provide visitor interpretation and administration of the Monument? (3) How will the BLM manage resource uses and protect the biological, historical, cultural, and visual values of the Monument? (4) How will Monument management be integrated with other agency and community plans? (5) How will transportation and access be managed? (6) How will Monument management affect economic and social conditions in the area?

Copies of the Proposed RMP and Final EIS for the Upper Missouri River Breaks National Monument have been sent to affected Federal, State, and Local Government agencies and to interested parties. Copies of the Proposed RMP and Final EIS are available for public inspection at the BLM Lewistown Field Office, 920 Northeast Main Street, Lewistown, Montana or at the Missouri Breaks Interpretive Center, 701 Seventh Street, Fort Benton, Montana. Interested persons may also review the Proposed RMP and Final EIS on the Internet at: *http://www.blm.gov/mt/st/en/fo/lewistown_field_office/um_rmp_process.html.*

Comments on the Draft RMP/EIS received from the public and internal BLM review comments were incorporated into the Proposed RMP and Final EIS. Public comments resulted in the addition of clarifying text, but did not significantly change proposed land use decisions.

Instructions for filing a protest with the Director of the BLM regarding the Proposed RMP and Final EIS may be found at 43 CFR 1610.5–2. E-mail and faxed protests will not be accepted as valid protests unless the protesting party also provides the original letter by either regular or overnight mail postmarked by the close of the protest period. Under these conditions, the BLM will consider the e-mail or faxed protest as an advance copy and it will receive full consideration. If you wish to provide the BLM with such advance notification, please direct faxed protests to the attention of Brenda Hudgens-Williams, Protest Coordinator, at 202–452–5112, and e-mails to *Brenda_Hudgens-Williams@blm.gov.* All protests, including the follow-up letter (if e-mailing or faxing) must be in writing and mailed to the following address:

Regular Mail: Director (210), Attention: Brenda Williams, P.O. Box 66538, Washington, DC 20035.

Overnight Mail: Director (210), Attention: Brenda Williams, 1620 L Street, NW., Washington, DC 20036.

Before including your address, phone number, e-mail address, or other personal identifying information in your protest, you should be aware that your entire protest—including your personal identifying information—may be made publicly available at any time. While you can ask us in your protest to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The Director will promptly render a decision on a protest. The decision will be in writing and will be sent to the protesting party by certified mail, return receipt requested. The decision of the Director is the final decision of the Department of the Interior.

Gene R. Terland,

State Director.

[FR Doc. E8–1790 Filed 1–31–08; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF INTERIOR

Bureau of Land Management

[UT–070–1310–EJ]

Notice of Availability of the Draft Environmental Impact Statement for the West Tavaputs Plateau Natural Gas Full Field Development Plan, Carbon and Duchesne Counties, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of the Draft Environmental Impact Statement (DEIS) for the West Tavaputs Plateau Natural Gas Full Field Development Plan prepared pursuant to the National Environmental Policy Act of 1969 (NEPA). The DEIS evaluates the impacts of development of natural gas resources on approximately 137,700 acres of public, state, and private lands on the West Tavaputs Plateau in Carbon and Duchesne Counties, Utah. This NEPA analysis will provide a basis for the Bureau of Land Management (BLM) to amend the applicable land use plan per 43 CFR 1610 if necessary.

DATES: The 90-day public review and comment period of the DEIS will commence on the date the Environmental Protection Agency publishes its notice of availability in the **Federal Register**. Comments must be submitted to the Price Field Office during this period to assure their consideration. Public open house meetings will be held in Price, Roosevelt, and in the Salt Lake City area to assist the public in its review of the DEIS and to accept written comments. Notice of these meetings will be publicized through various media, including the Utah BLM Environmental Notification Bulletin Board, at least 15 days prior to the meetings.

ADDRESSES: Address written comments to: Bureau of Land Management, Price Field Office, 125 South 600 West, Price, Utah 84501, Attn: West Tavaputs Plateau Natural Gas Full Field Development Plan DEIS, or submit them electronically at *http://www.blm.gov/ut/st/en/fo/price/energy/oil_gas/.* Comments and information submitted on the DEIS, including names, e-mail addresses, and street addresses of respondents, will be available for public review and disclosure at the above address. All comment submittals must include the commenter's name and street address. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

FOR FURTHER INROMATION CONTACT: Brad Higdon, Environmental Coordinator, Price Field Office at (435) 636–3613. The West Tavaputs Plateau Natural Gas Full Field Development Plan DEIS is available online at *http://www.blm.gov/ut/st/en/fo/price/energy/oil_gas/* or at the Price Field Office.

SUPPLEMENTARY INFORMATION: The DEIS evaluates a proposal by Bill Barrett Corporation and other operators to develop up to 807 natural gas wells on approximately 538 well pads within the 137,700 acre project area. The development plan proposal also includes a network of access roads, production facilities, and other operational infrastructure.

To address potential effects on the multiple resources which make up the affected environment, the BLM, in coordination with its cooperating agencies, has developed five alternatives in the DEIS. The alternatives include a No Action Alternative, the Proposed Action, a Transportation Impact Reduction Alternative, a Conservation Alternative, and an Agency Preferred Alternative, which includes components from each of the former alternatives. The alternatives incorporate best management practices for oil and gas development and other measures necessary to adequately

address impacts to transportation, public safety, cultural resources, recreational opportunities, Wilderness Study Areas (WSA), non-WSA lands with wilderness characteristics, areas proposed for designation as Areas of Critical Environmental Concern, wildlife, Threatened and Endangered Species, visual resources, air quality, and other relevant issues.

If components of the Proposed Action conflict with the Price River Management Framework Plan, the BLM must consider whether or not to amend the plan as part of its decision on full field development. A plan amendment would be necessary if the BLM, as part of its decision, approves an action that does not conform to the plan. Therefore, the DEIS discloses which full field development activities would not be in conformance with the plan and identifies which land use plan decisions would be amended.

Selma Sierra,

Utah State Director.

[FR Doc. E8–1760 Filed 1–31–08; 8:45 am]

BILLING CODE 1310–EJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Yakima River Basin Water Storage Feasibility Study; Benton, Yakima, and Kittitas Counties, Washington INT–DES 08–03

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Availability and Public Hearings on the Draft Planning Report and Environmental Impact Statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Reclamation (Reclamation) has prepared a combined Draft Planning Report and Environmental Impact Statement (Draft PR/EIS) on the Yakima River Basin Water Storage Feasibility Study (Storage Study). The Washington Department of Ecology (Ecology) is a joint lead with Reclamation in the preparation of the Draft PR/EIS which will also be used to comply with requirements of the Washington State Environmental Policy Act (SEPA). The cooperating agencies on this study are Yakima County; the U.S. Department of the Army: Yakima Training Center and the Seattle District of the U.S. Corps of Engineers; and the U.S. Department of Energy: Office of River Protection.

The purpose of the Yakima River Basin Water Storage Feasibility Study is to evaluate alternatives that would create additional water storage for the Yakima River basin and assess their potential to supply the water needed for ecosystem aquatic habitat, basin-wide agriculture, and municipal demands. The need for the study is based on the existing finite water supply and limited storage capability of the Yakima River basin in low water years. This finite supply and limited storage capacity do not meet the water supply demands in all years and result in significant adverse impact to the Yakima River basin's economy, which is agriculture-based, and to the basin's aquatic habitat, specifically, anadromous fisheries. The study seeks to identify means of increasing water storage available, including storage of Columbia River water, for purposes of improving anadromous fish habitat and meeting irrigation and municipal water supply needs.

DATES: Meetings will be held on 2 days in two locations:

- Wednesday, February 27, 2008, in Yakima, Washington.
- Thursday, February 28, 2008, in Kennewick, Washington.

On each day, an informational open house will occur from 1 to 2 p.m., followed by a public hearing to receive oral comments from 2 to 4 p.m. Another open house will occur from 6 to 7 p.m., followed by another public hearing from 7 to 9 p.m.

Requests for special assistance at the meetings should be submitted by February 15, 2008 (see **SUPPLEMENTARY INFORMATION** section, Special Assistance for Public Meetings).

Written comments on the draft PR/EIS will be accepted through March 31, 2008.

ADDRESSES: Meetings will be held at the following locations:

- Yakima, Washington: Yakima Convention Center, 10 North 8th St.
- Kennewick, Washington: Three Rivers Convention Center, 7016 W. Grandridge Blvd.

The meeting facilities are physically accessible to people with disabilities.

Written comments on the Draft PR/EIS should be addressed to the Bureau of Reclamation, Upper Columbia Area Office, Attention: David Kaumheimer, Environmental Programs Manager, 1917 Marsh Road, Yakima, Washington 98901–2058. Comments may also be submitted electronically to *storagestudy@pn.usbr.gov*. Requests for paper or CD copies of the Draft PR/EIS may be made to (509) 575–5848, ext. 612.

See **SUPPLEMENTARY INFORMATION** section for locations where copies of the Draft PR/EIS are available for public review.

Information on this project can also be found at *http://www.usbr.gov/pn/programs/storage_study/index.html*.

FOR FURTHER INFORMATION CONTACT: Contact David Kaumheimer, Environmental Programs Manager, Telephone: (509) 575–5848, extension 232.

SUPPLEMENTARY INFORMATION:

Hearing Process Information

Requests to make oral comments at the public hearings may be made at each hearing. In order to ensure that all those interested in providing oral comments have an opportunity to do so, oral comments at the hearings will be limited to 5 minutes. Comments will be recorded by a court reporter. Speakers will be called in the order indicated on the sign in list for speaking. Speakers not present when called will be recalled at the end of the scheduled speakers. Speakers may provide written versions of their oral comments, or other additional written comments, for the hearing record. Longer comments should be summarized at the public hearing and submitted in writing either at the public hearing or identified as hearing comments and mailed within 7 days of the hearing date to Mr. Dave Kaumheimer as indicated under the **ADDRESSES** section.

Background Information

Reclamation has undertaken this study to explore ways to augment water supplies in the Yakima River Basin for the benefit of anadromous fish, irrigated agriculture, and municipal water supply under the authority of Public Law 108–7, Title II, Section 214 which was passed by Congress on February 20, 2003. Public Law 108–7 states:

> The Secretary of the Interior, acting through the Bureau of Reclamation, shall conduct a feasibility study of options for additional water storage in the Yakima River Basin, Washington, with emphasis on the feasibility of storage of Columbia River water in the potential Black Rock Reservoir and the benefit of additional storage to endangered and threatened fish, irrigated agriculture, and municipal water supply. There are authorized to be appropriated such sums as may be necessary to carry out this Act.

Ecology is a joint lead with Reclamation in the preparation of this Draft PR/EIS which also complies with SEPA. In addition to the No Action Alternative, this jointly prepared Draft PR/EIS provides NEPA coverage for three storage alternatives, referred to as the Joint Alternatives, which Reclamation and Ecology are considering as part of the Storage Study.

These include: Black Rock Dam, Wymer Dam and Reservoir, and Wymer Dam plus Yakima River Pump Exchange Alternatives.

In addition to the storage alternatives being considered under feasibility study authority, this EIS provides SEPA coverage for three additional alternatives, referred to as the State Alternatives, which Ecology is considering. These include: Enhanced Water Conservation, Market Based Reallocation of Water Resources, and Groundwater Storage Alternatives.

Locations Where Copies of the Draft PR/EIS Are Available for Public Review

- Bureau of Reclamation, U.S. Department of the Interior, Room 7455, 1849 C Street, NW., Washington, DC 20240.
- Bureau of Reclamation, Denver Office Library, Denver Federal Center, Building 67, Room 167, Denver, Colorado 80225.
- Bureau of Reclamation, Pacific Northwest Regional Office, 1150 North Curtis Road, Suite 100, Boise, Idaho 83706–1234.
- Bureau of Reclamation, Upper Columbia Area Office, 1917 Marsh Road, Yakima, Washington 98901.
- Kennewick City Library, 1620 S. Union St., Kennewick, Washington 99338.
- Pasco City Library, 1320 W. Hopkins, Pasco, Washington 99301.
- Richland City Library, 955 Northgate Drive, Richland, Washington 99352.
- Yakima Valley Regional Library, 102 N. 3 rd St., Yakima, Washington 98901.
- Washington State Library, 6880 Capitol Blvd., SW, Olympia, Washington 98504.

Special Assistance for Public Meetings

TTY users may dial 711 to obtain a toll free TTY relay.

Requests for sign language interpretation for the hearing impaired should be submitted to David Kaumheimer at (509) 575–5848, extension 232, or mailed to him at the address in the **ADDRESSES** section.

Spanish language interpretation requests should be made to John Evans at (509) 575–5848. Si necesita interprete para Español, por favor llame John Evans a (509) 575–5848.

Public Disclosure

If you wish to comment on this draft PR/EIS, you may mail us your comments as indicated under the **ADDRESSES** section. Before including your name, address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

J. William McDonald,

Regional Director, Pacific Northwest Region.

[FR Doc. E8–1880 Filed 1–31–08; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice and request for comments for 1029–0091 and 1029–0118.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request continued approval for the collections of information under 30 CFR Parts 750 and 842 which relate to surface coal mining and reclamation operations on Indian Lands; and which allows the collection and processing of citizen complaints and requests for inspection, respectively.

DATES: Comments on the proposed information collections must be received by April 1, 2008, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 202—SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtrelease@osmre.gov.*

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection requests contact John A. Trelease, at (202) 208–2783. You may also review the collection requests at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. This notice identifies information collections that OSM will be submitting to OMB for approval. These collections are contained in: (1) 30 CFR Part 750, Requirements for surface coal mining and reclamation operations on Indian Lands; and (2) 30 CFR Part 842, Federal inspections and monitoring. OSM will request a 3-year term of approval for each information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

The following information is provided for the information collection: (1) Title of the information collection; (2) OMB control number; (3) summary of the information collection activity; and (4) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information.

Title: 30 CFR Part 750—Requirements for surface coal mining and reclamation operations on Indian Lands.

OMB Control Number: 1029–0091.

Summary: Operators who conduct or propose to conduct surface coal mining and reclamation operations on Indian lands must comply with the requirements of 30 CFR 750 pursuant to Section 710 of SMCRA.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Applicants for coal mining permits on Indian lands.

Total Annual Responses: 1.

Total Annual Burden Hours: 1,300.

Total Annual Non-Wage Burden: $15,000.

Title: 30 CFR Part 842—Federal inspections and monitoring.

OMB Control Number: 1029–0118.

Summary: For purposes of information collection, this part establishes the procedures for any person to notify the Office of Surface Mining in writing of any violation that may exist at a surface coal mining operation. The information will be used to investigate potential violations of the Act or applicable State regulations.

Bureau Form Number: None.
Frequency of Collection: Once.
Description of Respondents: Citizens, State governments.
Total Annual Responses: 44.
Total Annual Burden Hours: 451 hours.

Dated: January 24, 2008.

John R. Craynon,

Chief, Division of Regulatory Support.

[FR Doc. 08–449 Filed 1–31–08; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–991 (Review)]

Silicon Metal From Russia

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on silicon metal from Russia.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on silicon metal from Russia would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is March 24, 2008. Comments on the adequacy of responses may be filed with the Commission by April 15, 2008. For further information concerning the conduct of this review 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, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: February 1, 2008.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On March 26, 2003, the Department of Commerce issued an antidumping duty order on imports of silicon metal from Russia (68 FR 14578). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is Russia.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination, the Commission defined the *Domestic Like Product* as all silicon metal, regardless of grade, consistent with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the *Domestic Industry* as all domestic producers of silicon metal.

(5) The *Order Date* is the date that the antidumping duty order under review became effective. In this review, the *Order Date* is March 26, 2003.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the review 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 review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission's designated agency ethics official has advised that a five-year review is the ''same particular matter'' as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was ''personal and substantial.'' However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 08–5–178, expiration date June 30, 2008. Public reporting burden for the request is estimated to average 10 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is March 24, 2008. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is April 15, 2008. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 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). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information to be Provided in Response to this Notice of Institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date*.

(7) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 2007 (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s); and

(c) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2007 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country*; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country*.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2007 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date*, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country*, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product and Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: January 28, 2008.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–1733 Filed 1–31–08; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–745 (Second Review)]

Steel Concrete Reinforcing Bar From Turkey

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on steel concrete reinforcing bar (''rebar'') from Turkey.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on rebar from Turkey would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is March 24, 2008. Comments on the adequacy of responses may be filed with the Commission by April 15, 2008. For further information concerning the conduct of this review 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, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: February 1, 2008.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On April 17, 1997, the Department of Commerce issued an antidumping duty order on imports of rebar from Turkey (62 FR 18748). Following five-year reviews by Commerce and the Commission, effective March 26, 2003, Commerce issued a continuation of the antidumping duty order on imports of rebar from Turkey (68 FR 14579). The Commission is now conducting a second review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is Turkey.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination and its full five-year review determination, the Commission defined the *Domestic Like Product* as all rebar coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination and its full five-year review determination, the Commission found that ''appropriate circumstances'' existed to conduct a regional industry analysis and defined the *Domestic Industry* as all domestic producers of rebar within the Eastern Tier region.[2]

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 08–5–179, expiration date June 30, 2008. Public reporting burden for the request is estimated to average 10 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

[2] The Eastern Tier Region is comprised of the following: Maine, New Hampshire, Connecticut, Massachusetts, Rhode Island, Vermont, New Jersey, New York, Pennsylvania, Delaware, Florida, Georgia, Louisiana, Maryland, North Carolina, South Carolina, Virginia, West Virginia, Alabama, Kentucky, Mississippi, Tennessee, the District of Columbia, and Puerto Rico.

sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission is seeking guidance as to whether a second transition five-year review is the ''same particular matter'' as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was ''personal and substantial.'' However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is March 24, 2008. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is April 15, 2008. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 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 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information to be Provided in Response to this Notice of Institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2001.

(7) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2007 (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2007 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2007 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2001, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: January 28, 2008.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–1734 Filed 1–31–08; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Job Corps: Preliminary Finding of No Significant Impact (FONSI) for the Proposed Job Corps Center Located on Dunbarton Road, Manchester, NH

AGENCY: Office of the Secretary, Department of Labor.

ACTION: Preliminary Finding of No Significant Impact (FONSI) for the proposed Job Corps Center to be Located on Dunbarton Road, Manchester, NH.

SUMMARY: Pursuant to the Council on Environmental Quality Regulations (40 CFR part 1500–08) implementing procedural provisions of the National Environmental Policy Act (NEPA), the Department of Labor, Office of the Secretary (OSEC) in accordance with 29 CFR 11.11(d), gives notice that an Environmental Assessment (EA) has been prepared for a proposed new Job Corps Center to be located in Manchester, New Hampshire, and that the proposed plan for a new Job Corps Center will have no significant environmental impact. This Preliminary Finding of No Significant Impact (FONSI) will be made available for public review and comment for a period of 30 days.

DATES: Comments must be submitted by February 15, 2008.

ADDRESSES: Any comment(s) are to be submitted to Edward C. Campbell, Realty Officer Department of Labor, 200 Constitution Avenue, NW., Room N–4460, Washington, DC 20210, (202) 693–2834 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Copies of the EA are available to interested parties by contacting Michael F. O'Malley, Architect, Unit Chief of Facilities, National Office of Job Corps, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–4460, Washington, DC 20210, (202) 693–3108 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: This EA summary addresses the proposed construction of a new Job Corps Center in Manchester, New Hampshire. The site for the proposed Job Corps Center consists of approximately 20 acres of undeveloped land, within a 425.10 acre parcel, owned by Manchester Housing and Redevelopment.

The new center will require construction of approximately eight new buildings. The proposed Job Corps Center will provide housing, training, and support services for approximately 300 students. The current facility utilization plan includes new dormitories, a cafeteria building, administration offices, recreation facilities, and classroom facilities.

The construction of the Job Corps Center on this proposed site would be a positive asset to the area in terms of environmental and socioeconomic improvements, and long-term productivity. The proposed Job Corps Center will be a new source of employment opportunity for people in the Manchester metropolitan area. The Job Corps program provides basic education, vocational skills training, work experience, counseling, health care and related support services. The program is designed to graduate students who are ready to participate in the local economy.

The proposed project may have an impact on natural sources located within the proposed site. Five separate wetlands: two vernal pools, one isolated depression, and two seasonal streams

are located within the proposed project area. The vernal pools are the highest quality wetlands on the site and may provide wildlife habitat. One vernal pool is located just to the west of the middle of the property and the other is located near the southwest corner of the property. The two seasonal streams are approximately 100′ from the west and east borders of the property. The seasonal streams are too narrow steep and ephemeral to sustain wetland vegetation or wildlife habitat. The isolated depression is too shallow and ephemeral for use by wildlife. Construction will comply with local, state and federal regulations regarding wetlands.

No state or federal threatened or endangered species (proposed or listed) have been identified on the subject property.

The Job Corps Center construction will not affect any existing historic structures, as there are no historic or archeologically sensitive areas on the proposed property parcel.

Air quality and noise levels should not be affected by the proposed development project. Due to the nature of the proposed project, it would not be a significant source of air pollutants or additional noise, except possibly during construction of the facility. All construction activities will be conducted in accordance with applicable noise and air pollution regulations, and all pollution sources will be permitted in accordance with applicable pollution control regulations.

The proposed Job Corps Center is not expected to significantly increase the vehicle traffic in the vicinity.

The proposed project will not have any significant adverse impact on the surrounding water, sewer, and storm water management infrastructure. The proposed project will involve construction of new water, sanitary and storm sewer lines. The closest water main to the proposed site is approximately 1.1 miles from the site down Dunbarton Road. The City sewer line ends at the intersection of Liane Street and Dunbarton Road, approximately 1 mile from the proposed site.

Public Service of New Hampshire will provide the electricity for the site. This is not expected to create any significant impact to the regional utility infrastructure.

The Job Corps Center is not expected to result in a significant increase in vehicular traffic, since many of the Job Corps Center residents will either live at the Job Corps Center or use public transportation. While some Job Corps Center students and staff may use personal vehicles, their number would not result in a significant increase in vehicular traffic in the area. However, the proposed Job Corps Center entrance would be from North 60th Street. North 60th Street is a well-used, two-lane thoroughfare. The Manchester Transit Authority will provide public transportation.

No significant adverse affects to local medical, emergency, fire and police services are anticipated. The primary medical provider located closest to the proposed Job Corps parcel is the Catholic Medical Center, approximately 3.2 miles from the proposed Job Corps Center. Security services at the Job Corps will be provided by the center's security staff. Law enforcement services are provided by the City of Manchester Police Department—located approximately 3.8 miles from the proposed project site. The City of Manchester Fire Department will provide fire protection. Manchester Fire Department Station #6, which operates 24 hours a day, is located approximately 3.1 miles from the site.

The proposed project will not have a significant adverse sociological affect on the surrounding community. Similarly, the proposed project will not have a significant adverse effect on demographic and socioeconomic characteristics of the area.

The alternatives considered in the preparation of this FONSI were as follows: (1) No Action; and (2) Continue Project as Proposed. The No Action alternative was not selected. The U.S. Department of Labor's goal of improving the Job Corps Program by improving the learning environment at Job Corps Centers would not be met under this alternative. Due to the suitability of the proposed site for establishment of a new Job Corps Center, and the absence of any identified significant adverse environmental impacts from locating a Job Corps Center on the subject property, the ''Continue Project as Proposed'' alternative was selected.

Based on the information gathered during the preparation of the EA, no environmental liabilities, current or historical, were found to exist on the proposed Job Corps Center site. The construction of the Job Corps Center at Dunbarton Road, Manchester, New Hampshire will not create any significant adverse impacts on the environment.

Dated: January 28, 2008.

Esther R. Johnson,

National Director of Job Corps.

[FR Doc. E8–1870 Filed 1–31–08; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Office of the Secretary

Job Corps: Preliminary Finding of No Significant Impact (FONSI) for the Proposed Job Corps Center Located at College Avenue and 6th Street, Ottumwa, IA

AGENCY: Office of the Secretary, Department of Labor.

ACTION: Preliminary Finding of No Significant Impact (FONSI) for the proposed Job Corps Center to be Located at College Avenue and 6th Street, Ottumwa, Iowa.

SUMMARY: Pursuant to the Council on Environmental Quality Regulations (40 CFR part 1500–08) implementing procedural provisions of the National Environmental Policy Act (NEPA), the Department of Labor, Office of the Secretary (OSEC) in accordance with 29 CFR 11.11(d), gives notice that an Environmental Assessment (EA) has been prepared for a proposed new Job Corps Center to be located in Ottumwa, Iowa and that the proposed plan for a new Job Corps Center will have no significant environmental impact. This Preliminary Finding of No Significant Impact (FONSI) will be made available for public review and comment for a period of 30 days.

DATES: Comments must be submitted by February 15, 2008.

ADDRESSES: Any comment(s) are to be submitted to Edward C. Campbell, Realty Officer Department of Labor, 200 Constitution Avenue, NW., Room N–4460, Washington, DC 20210, (202) 693–2834 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Copies of the EA are available to interested parties by contacting Michael F. O'Malley, Architect, Unit Chief of Facilities, National Office of Job Corps, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–4460, Washington, DC 20210, (202) 693–3108 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject property for the proposed Job Corps Center (JCC) consists of 28.68 acres of undeveloped land, owned by Indian Hills Community College. The subject property is located east of the College Avenue and 6th Street intersection approximately five miles north of downtown Ottumwa in an unincorporated area of Wapello County, Iowa. The property is located at the eastern edge of the Ottumwa Industrial Airport district which is characterized by industrial and commercial uses, as well as vacant land used primarily for row crop farming.

The proposed Ottumwa JCC will be new construction, which will utilize a campus setting. The facility will consist of seven buildings, which will support approximately 300 resident students with 104 staff members. The proposed buildings include an administrative/wellness center/maintenance building, two dormitories, an educational/vocational building, a cafeteria/warehouse building, a student services/welcome center building and a recreation building. The proposed site also includes outdoor recreation fields and courts and associated paved parking areas and drives. The gross area of all of the proposed buildings will be approximately 150,000 square feet.

The proposed Ottumwa JCC is not expected to have any negative impact on the demographics of the surrounding neighborhoods. The proposed Ottumwa JCC is expected to have a positive impact on the lives of disadvantaged youths living in the Ottumwa and southeast Iowa areas. The purpose of the JCC is to provide basic education, vocational skills training, health care, and work experience, to allow disadvantaged persons from Ottumwa and surrounding communities to improve their position in the workplace and society. The goal of the JCC is to allow the disadvantaged to obtain a better education and to allow participants to reach a level of economic security above the poverty line. If these goals are reached, the JCC will have a positive impact by increasing the current educational and employment levels in the surrounding communities.

No proposed or listed endangered or threatened species, critical habitat or wetlands are known to exist within the proposed project area. The proposed project is not expected to have an adverse effect on any archaeological or historical properties since there are no documented historic or cultural sites within a one mile radius.

The JCC is also not expected to have an impact on the overall population numbers in the community based on the estimated 300 students that will live at the facility. City services, such as Police, Fire and Emergency Services will not expect additional stress to their current capabilities since these services are currently providing respective services to the area. Utility services, such as water, electric, gas and sanitary sewer, would be able to absorb the additional loads from the JCC with little to no impact. The development of the property will involve construction of new water, sanitary and storm sewer lines. The proposed JCC is not expected to have negative impacts on air quality in the area, since it does not involve industrial or commercial processes.

Temporary aesthetic impacts and minor noise impacts are anticipated during construction activities. Aesthetic impacts will be mitigated with the development of the property and the noise impacts will be short-termed and not significant.

The proposed Ottumwa JCC development is not expected to result in a significant increase in vehicular traffic, since many of the JCC students will either live in the dormitories or use public transportation. While some JCC students may use personal vehicles, the roadway infrastructure in the area is capable of absorbing the additional traffic.

Based on the information gathered during the preparation of the NEPA Environment Assessment, no environmental concerns were found to exist on the proposed JCC site other than the proposed site is considered ''prime farmland'' that is currently being used for row crop farming. Based on the size of the proposed development and the significant amount of defined prime farmland in the surrounding areas, the proposed development of the property is not considered a significant impact to the agricultural output for the area.

The alternatives considered in the preparation of this FONSI were as follows: (1) No Action; and (2) Continue Project as Proposed. The No Action alternative was not selected. The U.S. Department of Labor's goal of improving the Job Corps Program by improving the learning environment at Job Corps Centers would not be met under this alternative. Due to the suitability of the proposed site for establishment of a new Job Corps Center, and the absence of any identified significant adverse environmental impacts from locating a Job Corps Center on the subject property, the ''Continue Project as Proposed'' alternative was selected.

Based on the information gathered during the preparation of the EA, no environmental liabilities, current or historical, were found to exist on the proposed Job Corps Center site. The construction of the Job Corps Center at College Avenue and 6th Street, Ottumwa, Iowa will not create any significant adverse impacts on the environment.

Dated: January 28, 2008.

Esther R. Johnson,

National Director of Job Corps.

[FR Doc. E8–1871 Filed 1–31–08; 8:45 am]

BILLING CODE 4510–23–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 February 11, 2008.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than February 11, 2008.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 25th day of January 2008.

Ralph DiBattista,

Director, Division of Trade Adjustment Assistance.

APPENDIX

TAA petitions instituted between 1/14/08 and 1/18/08

TA–W	Subject firm (Petitioners)	Location	Date of institution	Date of petition
62669	La-z-Boy Greensboro, Inc. (State)	North Wilkesboro, NC	01/14/08	01/10/08
62670	Visteon Concordia VRAP (UAW)	Concordia, MO	01/14/08	12/12/07
62671	Melvin Quilting Company (Wkrs)	Rocky Mount, NC	01/14/08	01/11/08
62672	Emcore Corporation (Wkrs)	Albuquerque, NM	01/14/08	01/07/08
62673	Siemens Energy and Automation, Inc. (E & A) (Comp)	Urbana, OH	01/14/08	01/03/08
62674	Fiber Yarn and Fillers (UNITE)	Philadelphia, PA	01/14/08	01/10/08
62675	Syncreon-US, JNAP Operation (Comp)	Detroit, MI	01/14/08	01/11/08
62676	Hexion Chemicals (Wkrs)	Pleasant Prairie, WI	01/14/08	01/10/08
62677	Llink Technologies, LLC (Comp)	Brown City, MI	01/14/08	01/02/08
62678	Dual-Lite Cayman Ltd (State)	Naguabo, PR	01/14/08	01/10/08
62679	Hydraulic Technologies Inc. (Wkrs)	Galion, OH	01/14/08	12/27/07
62680	Siemens E & A, Inc. (Comp)	Bellefontaine, OH	01/14/08	01/03/08
62681	Tyco Electronics (Comp)	Reading, PA	01/15/08	01/14/08
62682	Plastech Engineering, Inc. (State)	Winnsboro, SC	01/15/08	01/14/08
62683	Harvey Industries, LLC (Wkrs)	Wabash, IN	01/15/08	01/07/08
62684	The New Mayflower Corporation (Comp)	Old Forge, PA	01/15/08	01/14/08
62685	Newton Tool (Wkrs)	Swedesboro, NJ	01/15/08	01/04/08
62686	FitLinxx (State)	Norwalk, CT	01/15/08	01/14/08
62687	Georgia-Pacific Corporation Plywood Plant (State)	Crossett, AR	01/15/08	01/14/08
62688	Sei Communications (Wkrs)	Dillsboro, IN	01/16/08	01/15/08
62689	Emerson Power Transmission (Comp)	Aurora, IL	01/16/08	01/15/08
62690	L and W Engineering Co., Inc. (State)	Holland, MI	01/16/08	01/15/08
62691	Von Weise USA (Wkrs)	Eaton Rapids, MI	01/17/08	01/14/08
62692	SSB Acqusitions/Saunder Brothers (Wkrs)	Greenwood, ME	01/17/08	01/15/08
62693	Huffman Hosiery Mills, Inc. (Wkrs)	Granite Falls, NC	01/17/08	12/19/07
62694	Girard School District (Wkrs)	Girard, PA	01/17/08	01/15/08
62695	Springs Global US, Inc. (Comp)	Fort Mill, SC	01/17/08	01/15/08
62696	J. J. Peiger Company (Comp)	Pittsburgh, PA	01/17/08	01/15/08
62697	Galey and Lord/Swift Galey (Comp)	Gastonia, NC	01/17/08	01/07/08
62698	Body Cote Material Testing (Wkrs)	Hillsdale, MI	01/17/08	01/09/08
62699	Victor Plastics Inc. (Comp)	North Liberty, IA	01/17/08	01/15/08
62700	Contact Industries/dba Clear Pine Mouldings (State)	Prineville, OR	01/17/08	01/05/08
62701	Tri-Core Mold and Die, Inc./Powermark International, Inc. (Wkrs).	Machesney Park, IL	01/18/08	01/11/08
62702	Merix Corporation (Wkrs)	Wood Village, OR	01/18/08	01/18/08
62703	Syngenta (Comp)	Bucks, AL	01/18/08	01/17/08
62704	Springs Window Fashions (Wkrs)	Montgomery, PA	01/18/08	01/04/08
62705	Faurecia Exhaust Systems, Inc. (Comp)	Troy, OH	01/18/08	01/11/08
62706	TJD Fabrications, Inc. (Comp)	Plattsburgh, NY	01/18/08	01/11/08
62707	General Cable Corporation (Wkrs)	Jackson, TN	01/18/08	01/14/08

[FR Doc. E8–1824 Filed 1–31–08; 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 *January 14 through January 18, 2008.*

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the

articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W–62,521; JRL Enterprises, Inc., Falconer, NY: November 28, 2006.

TA–W–62,598; Matthew Cole, Inc., Philadelphia, PA: December 21, 2006.

The following certifications have been issued. The requirements of section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

None.

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–62,565; Glen Raven Custom Fabrics, LLC, Elberton Facility, A Division of Glen Raven, Inc., Elberton, GA: December 5, 2006.

TA–W–62,585; New NY Fashion, Inc., New York, NY: December 7, 2006.

The following certifications have been issued. The requirements of section 222(a)(2)(B) (shift in production) and section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–62,490; Lear Corporation, Morristown, TN: November 20, 2006.

TA–W–62,528; Holophane, Division of Acuity Brands, Inc., Utica, OH: November 29, 2006.

TA–W–62,538; ITW Foils, Mt. Pleasant, MI: December 4, 2006.

TA–W–62,578; Safety Light Corporation, Bloomsburg, PA: December 10, 2006.

TA–W–62,605; Tyco Electronics, Network Solutions Division, Fuquay-Varina, NC: December 20, 2006.

TA–W–62,606; Fantech, Inc., Sarasota, FL: December 20, 2006.

TA–W–62,632; Wellstone Investors, LLC, Lakeside II Plant, Eufaula, AL: December 21, 2006.

TA–W–62,633; Faurecia Exhaust Systems, Granger, IN: January 2, 2007.

TA–W–62,656; Saint Gobain Abrasives, Norton Pike Division, Littleton, NH: January 9, 2007.

TA–W–62,501; American Fiber and Finishing, Inc., Albemarle, NC: November 27, 2006.

TA–W–62,566; WestPoint Home, On-Site Leased Workers From A–1 Employment, Bath Products Div., Valley, AL: December 10, 2006.

TA–W–62,644; DC Safety Sales Co., Inc., Hauppauge, NY: January 4, 2007.

The following certifications have been issued. The requirements of section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–62,548; Kaso Plastics, Inc., Vancouver, WA: December 3, 2006.

TA–W–62,563; Graham Packaging Company, L.P., On-Site Leased Workers from East-West Staffing, Oakdale, CA: December 11, 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–62,521; JRL Enterprises, Inc., Falconer, NY.

TA–W–62,598; Matthew Cole, Inc., Philadelphia, PA.

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–62,597; Parma Corporation, Denton, NC.

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–62,400; Janesville Acoustics, Grand Rapids, MI.

TA–W–62,541; GE Consumer and Industrial, Electrical Equipment Division, West Burlington, IA.

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–62,341; Nortel Networks Corporation, Global Order Fulfillment, Research Triangle Park, NC.

TA–W–62,479; Grand Knitting Mills, Blueberry Boulevard, LLC, Amityville, NY.

TA–W–62,493; Electronic Data Systems, Computer Operators of the Mainframe Disaster, Recovery Testing for GM, Flint, MI.

TA–W–62,599; J.C. Matthews and Company, Inc., Galax, VA.

TA–W–62,627; Newton Transportation Company, Inc., Hudson, NC.

TA–W–62,675; Syncreon-US, JNAP Operation, Division of Syncreon Automotive, Detroit, 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.

None.

I hereby certify that the aforementioned determinations were issued during the period of *January 14 through January 18, 2008.* 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: January 24, 2008.

Ralph DiBattista,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E8–1825 Filed 1–31–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,677]

Llink Technologies, LLC, Brown City, MO; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 14, 2008 in response to a petition filed by a company official on behalf of workers of Llink Technologies, LLC, Brown City, Missouri.

The Department has determined that this petition is a photocopy of petition number TA–W–62,630, instituted on January 3, 2008. The investigation of that petition is ongoing and determination has not yet been issued. Therefore, further investigation in the case would serve no purpose, and this investigation has been terminated.

Signed at Washington, DC, this 23rd day of January, 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–1828 Filed 1–31–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,703]

Syngenta Inc. Crop Protection Division, Bucks, AL; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 18, 2008 in response to a petition filed by a company official on behalf of workers of Syngenta Inc., Crop Protection Division, Bucks, Alabama.

The petitioning group of workers is covered by an active certification (TA–W–59,181), which expires on April 21, 2008. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 25th day of January 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–1823 Filed 1–31–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,670]

Visteon Concordia VRAP, Concordia, MO; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 14, 2008 in response to a petition filed by the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America on behalf of workers of Visteon Concordia VRAP, Concordia, Missouri.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 23rd day of January, 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–1827 Filed 1–31–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,760]

Hutchinson Technology, Eau Claire, WI; Notice of Negative Determination on Remand

On November 6, 2007, the U.S. Court of International Trade (USCIT) granted the U.S. Department of Labor's motion for a voluntary remand in *Former Employees of Hutchinson Technology* v. *U.S. Secretary of Labor*, Court No. 07–335.

On June 21, 2007, a TAA Coordinator for the State of Wisconsin filed a

petition for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) on behalf of workers and former workers at Hutchinson Technology, Eau Claire, Wisconsin (the subject facility) producing suspension assemblies for disc drives(the subject worker group). Administrative Record (AR) 1–3.

The Department's negative determination, issued on July 10, 2007 (72 41088, July 26, 2007), was based on findings that worker separations at the subject facility were caused by declining sales due to decreased exports and that the subject firm did not import suspension assemblies for disc drives. AR 19.

On August 22, 2007, a former employee of the subject firm (the petitioner) requested administrative reconsideration of the negative determination. Supplemental Administrative Record (SAR) 28–30. In that request, the petitioner asserted that ''the decision made on July 10, 2007 was made in error because the U.S. Department of Labor did not have all of the facts relevant to the application.'' SAR 28. On September 28, 2007, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm, because the Department determined that additional information received from the petitioner concerning the subject firm's customers merited investigation. The Department's Notice of determination was published in the **Federal Register** on October 5, 2007 (72 FR 57070). SAR 34.

On September 7, 2007, while the request for reconsideration was pending before the Department, the petitioner appealed the denial of its petition to the USCIT. The appeal was based on the same information that appeared in the request for reconsideration. On November 6, 2007 the Department obtained a voluntary remand of the USCIT proceeding so that the Department could investigate the allegations and information provided by the Plaintiff in the request for reconsideration.

In the request for reconsideration the petitioner acknowledged that ''currently the majority of hard drive suspensions are exported overseas''. AR 29. However, the requester also stated that the subject firm separated a significant number of workers and that sales and production have decreased during the relevant time period, and that this negative impact was a direct result of the loss of the Argon product line at the subject firm to a foreign competitor based in Singapore.

The Department contacted the petitioner to obtain additional information regarding the Argon product line and the imports impacting the subject firm. The petitioner did not have any additional information and requested the Department to verify all the information with the officials of the subject firm. SAR 64.

The Department contacted a company official to address this allegation. The company official clarified that Argon is the name of a specific suspension assembly product that was manufactured for a major customer headquartered in the United States. The company official further confirmed that Argon product line was lost to a foreign competitor, which resulted in declines in total sales, production and employment at the subject firm. SAR 36. The decline in sales to this customer represented nearly the entire subject firm's total domestic sales decline. The official also stated that Argon product line was specifically sold and shipped to a customer's foreign subsidiary and was not sold on the domestic market. SAR 39, 45. Therefore, the losses in sales and production of Argon line and consequent decline in employment at the subject firm are the direct result of the decrease in exports.

The Department contacted the major domestic customer who purchased the Argon-line products to confirm this information. It was confirmed that this customer purchased these products for export to a foreign subsidiary and no suspension assembly products have been imported into the United States by this customer. SAR 45,46,67.

The request for reconsideration further alleged that ''the majority of hard drive suspensions are exported overseas to be assembled into computer hard drives and imported back into the United States.'' SAR 29. The petitioner concluded that imported finished products which contain foreign manufactured components are like or directly competitive with imported finished products containing components manufactured by the subject firm and therefore, the subject firm should be considered import impacted.

In order to establish import impact, the Department must consider imports that are like or directly competitive with the products manufactured by the petitioning worker group. Suspension assemblies are components of computer hard drives, which incorporate multiple components. Therefore, suspension assemblies are not like or directly competitive with the computer hard drives produced abroad and imported by the subject firm or its customers. Accordingly, imports of computer hard drives are not relevant in this investigation and increased imports of computer hard drives cannot be the basis for certification of the subject worker group. *International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW, Local 834* v. *Donovan*, 592 F. Supp. 673, 677–679 (C.I.T. 1984).

In the request for reconsideration the petitioner further alleged that Hutchinson Technology, Inc. shifted functions of the microscope inspection labor to either Singapore, Thailand and/or China via sub-contracting. SAR 29, 30.

The Department contacted the petitioner to obtain additional information regarding the sorting functions. The petitioner stated that sorting was not a part of the production process, but is integrated into the production cost and that workers performing these functions should be considered in support of production. While uncertain, the petitioner conjectured that the sorting functions had been shifted to Singapore but that the Department should rely on information received from the officials of the subject firm. SAR 64.

The Department contacted a company official to address this allegation. The company official stated that the subject firm used its service center in Thailand to undertake inspection and sorting and that some sorting functions have been shifted from the subject firm to Thailand in the relevant time period. The official also stated that workers performing sorting and inspection functions do not produce suspension assemblies for disk drives, but rather support production of all suspension assemblies for disk drives. SAR 47, 66. The subject firm did not shift production of suspension assemblies for disk drives abroad. SAR 36.

Furthermore, Thailand is not a country that is a party to a free trade agreement with the United States or a country that is named as a beneficiary under the Andean Trade Preference Act, the African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act. Any shift to Thailand cannot be the basis for certification of the subject worker group.

During the initial phase of the reconsideration/remand investigation, the Department contacted Plaintiff for additional information and clarification of his allegations. Once Plaintiff had retained Counsel, the parties filed a consent motion for a 30-day extension of the remand period so that Plaintiff's Counsel had an opportunity to review the record and provide the Department

with comments and other pertinent information. That motion was granted on December 12, 2007. The Counsel was provided with the business confidential information from the initial administrative record as well as with the material generated in the reconsideration/remand investigation. While the investigator contacted Plaintiff's Counsel to remind him of his opportunity, the Department received no substantive input. SAR 68–70.

In addition, in accordance with section 246 of the Trade Act of 1974, as amended, the Department herein presents the results of its remand investigation regarding certification of eligibility to apply for ATAA.

In order for the Department to issue a certification of eligibility to apply for ATAA, the subject worker group must be certified as eligible to apply for TAA. Since the workers have been denied certification for TAA, they cannot be certified for ATAA.

Conclusion

After careful review of the findings of the remand investigation, I affirm the original notice of negative determination of eligibility to apply for trade adjustment assistance for workers and former workers of Hutchinson Technology, Eau Claire, Wisconsin.

Signed in Washington, DC, this 18th day of January 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–1826 Filed 1–31–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection, Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed extension of the Quarterly Census of Employment and Wages Program. A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the Addresses section of this notice on or before April 1, 2008.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, 202–691–7628. (This is not a toll free number.)

FOR FURTHER INFORMATION CONTACT: Amy A. Hobby, BLS Clearance Officer, 202–691–7628. (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The Quarterly Census of Employment and Wages (QCEW) program, a Federal/State cooperative effort, produces monthly employment and quarterly wage information. It is a by-product of quarterly reports submitted to State Workforce Agencies (SWAs) by employers subject to State Unemployment Insurance (UI) laws. The collection of these data is authorized by 29 U.S.C. 1, 2. The QCEW data, which are compiled for each calendar quarter, provide a comprehensive business name and address file with employment and wage information for employers subject to State UI laws. Similar data for Federal Government employers covered by the Unemployment Compensation for Federal Employees program also are included. These data are submitted to the BLS by all 50 States, the District of Columbia, Puerto Rico, and the Virgin Islands. The BLS summarizes these data to produce totals for all counties, Metropolitan Statistical Areas, the States, and the nation. The QCEW program provides a virtual census of nonagricultural employees and their wages, with about 51 percent of the workers in agriculture covered as well.

The QCEW program is a comprehensive and accurate source of data on the number of establishments, monthly employment, and quarterly wages, by industry, at the six-digit North American Industry Classification System (NAICS) level, and at the national, State, Metropolitan Statistical Area, and county levels. The QCEW series has broad economic significance in measuring labor trends and major industry developments, in time series analyses and industry comparisons, and in special studies such as analyses of establishments, employment, and wages by size of establishment.

II. Current Action

Office of Management and Budget clearance is being sought for the Quarterly Census of Employment and Wages (QCEW) program.

The QCEW program is the only Federal statistical program that provides information on establishments, wages, tax contributions and the number of employees subject to State UI laws and the Unemployment Compensation for Federal Employees program. The consequences of not collecting QCEW data would be grave to the Federal statistical community. The BLS would not have a sampling frame for its establishment surveys; it would not be able to publish as accurate current estimates of employment for the U.S., States, and metropolitan areas; and it would not be able to publish quarterly census totals of local establishment counts, employment and wages. The Bureau of Economic Analysis would not be able to publish as accurate personal income data in a timely manner for the U.S., States, and local areas. Finally, the Employment Training Administration would not have the information it needs to administer the Unemployment Insurance Program.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- 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.
- 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 submissions of responses.

Type of Review: Extension of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Quarterly Census of Employment and Wages (QCEW) Program.
OMB Number: 1220–0012.
Affected Public: State Government.
Total Respondents: 53.
Frequency: Quarterly.
Total Responses: 212.
Average Time Per Response: 5,122 hours.
Estimated Total Burden Hours: 1,085,760 hours.
Total Burden Cost (capital/startup): $0.
Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 28th day of January 2008.

Kimberley Hill,

Acting Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. E8–1803 Filed 1–31–08; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (08–012)]

Aerospace Safety Advisory Panel; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting; correction.

Federal Register Citation of Previous Announcement: 73 FR 4641, Notice Number 08–009, January 25, 2008.

SUMMARY: The National Aeronautics and Space Administration published a document in the **Federal Register** of January 25, 2008, announcing a meeting of the Aerospace Safety Advisory Panel (ASAP). The document did not announce the meeting date.

Correction: Date of ASAP meeting is Wednesday, February 13, 2008, 1 p.m. to 3 p.m.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Dakon, Aerospace Safety Advisory Panel Executive Director, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–0732.

Dated: January 28, 2008.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. E8–1912 Filed 1–31–08; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Astronomy and Astrophysics Advisory Committee #13883; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following Astronomy and Astrophysics Advisory Committee (#13883) meeting:

Date and Time: February 11–12, 2008, 8:30 a.m.–5 p.m.

Place: National Science Foundation, Room 1235, Stafford I Building, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Dr. G. Wayne Van Citters, Director, Division of Astronomical Sciences, Suite 1045, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: 703–292–4908.

Purpose of Meeting: To provide advice and recommendations to the National Science Foundation (NSF), the National Aeronautics and Space Administration (NASA) and the U.S. Department of Energy (DOE) on issues within the field of astronomy and astrophysics that are of mutual interest and concern to the agencies.

Agenda: To hear presentations of current programming by representatives from NSF, NASA, DOE and other agencies relevant to astronomy and astrophysics; to discuss current and potential areas of cooperation between the agencies; to formulate recommendations for continued and new areas of cooperation and mechanisms for achieving them.

Reason for Late Notice: Scheduling conflicts and staff travel prevented the meeting notice to be posted earlier.

Dated: January 29, 2008.

Susanne E. Bolton,

Committee Management Officer.

[FR Doc. E8–1837 Filed 1–31–08; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[EA–07–111,114,117]

In the Matter of: Wackenhut Nuclear Services, Inc.; Confirmatory Order (Effective Immediately)

I

Wackenhut Nuclear Services, Inc. (WNS) provides security related services to the Turkey Point Nuclear Plant (Turkey Point), operated by Florida Power & Light Company (FPL or Licensee). FPL holds License Nos. DPR–31 and DPR–41, issued by the Nuclear Regulatory Commission (NRC or Commission) on July 19, 1972, and April 10, 1973, respectively, pursuant to 10 CFR Part 50. The license authorizes the operation of Turkey Point, Units 3 and 4, in accordance with the conditions specified therein. Turkey Point is located on the Licensee's site in Florida City, Florida.

II

On February 24, 2006, the Nuclear Regulatory Commission (NRC) completed an on-site inspection of security-related matters at FPL's Turkey Point Nuclear Plant. During the inspection, an investigation was initiated by the NRC's Office of Investigations (OI), which was subsequently completed on August 23, 2006. The purpose of the investigation was to determine whether WNS security personnel rendered contingency response weapons non-functional and whether information in FPL documents was inaccurate or incomplete in some respect material to the Commission. The results of the OI investigation and additional in-office inspection activity were documented in a letter to WNS dated May 25, 2007, which identified three apparent violations involving the activities of WNS employees. The three apparent violations included:

A. In August 2005, a broken firing pin from a contingency response weapon was discovered at FPL's Turkey Point facility. Based on an investigation, the NRC's OI determined that a WNS security officer deliberately removed and broke a firing pin from a contingency response weapon, rendering the weapon non-functional. This activity caused FPL's Turkey Point Nuclear Plant to be in apparent violation of its Physical Security Plan, sections 4.1 and 5.4, Revision 0b, and Security Force Instruction (SFI) 2404, section 2.3, Revision 21, and caused WNS to be in apparent violation of 10 CFR 50.5.

B. In April of 2004, a WNS employee deliberately removed the firing pins from two contingency response weapons, rendering the weapons non-functional. These actions caused FPL to be in apparent violation of a February 25, 2002, NRC Order and Interim Compensatory Measures, section B.4(f) , and caused WNS to be in apparent violation of 10 CFR 50.5.

C. On or about October 2004, the WNS Project Manager assigned to FPL's Turkey Point Nuclear Plant, provided the licensee with information in Condition Report (CR) 2004–13573, related to a damaged firing pin event, which was not complete or accurate in some respect material to the NRC. The CR was provided by FPL to NRC inspectors during a February 2006 inspection at Turkey Point, and was used to inform the NRC's inquiry regarding additional actions necessary to address serious security concerns.

The NRC preliminarily concluded that the WNS security project manager engaged in deliberate misconduct in apparent violation of 10 CFR 50.5, in that he was aware at the time that the information documented in the CR was not complete or accurate. As a result, the WNS security project manager's actions caused FPL to be in apparent violation of 10 CFR 50.9, and caused WNS to be in apparent violation of 10 CFR 50.5.

III

The results of the NRC's preliminary conclusions, as discussed in Section II, were provided to WNS by NRC letter dated May 25, 2007. The NRC's letter informed WNS that the NRC was considering the apparent violations for escalated enforcement action in accordance with the NRC Enforcement Policy, and offered WNS a choice to: (1) Attend a Pre-decisional Enforcement Conference; (2) provide a written response; or (3) request ADR with the NRC in an attempt to resolve any disagreement on whether violations occurred, the appropriate enforcement action, and the appropriate corrective actions. In response, WNS requested ADR to resolve the matter. WNS and the NRC participated in an ADR session in Atlanta, Georgia, on August 27, 2007. As a result of the ADR session, WNS and the NRC reached an Agreement in Principle, which consisted of the following elements:

1. WNS agrees to the underlying facts which give rise to apparent violations (A) and (B) as discussed in section II. Regarding violation (C), WNS agreed to provide, within 10 business days of the date of the Agreement in Principle, subject to 10 CFR 2.390, information on the docket to support its view that the subject violation did not occur. NRC agrees to review and consider this information during the course of its deliberations in this and related matters prior to the issuance of a Confirmatory Order.

2. During the ADR, WNS described its implementation of enhanced employment selection programs, many of which are intended to address professionalism and high standards of integrity that exceed regulatory requirements. NRC and WNS reached a preliminary agreement that WNS will continue its initiatives in the following areas to achieve sustained enhancements in security:

1. WNS New Hire/Recruitment Policy; WNS 102, ''New Hire Recruitment Policy'';

2. Site Enhancement Plan related to the Turkey Point facility;

3. Development of an enhanced program for leadership development and WNS' desire to be ''best in class'';

4. Benchmarking to include audits, self-assessments, and Safety Conscious Work Environment;

5. Ideal Facility Performance Indicators for Turkey Point;

6. Continual Behavior Observation Program will include ''one-on-one'' discussions between supervisors and their direct reports to discuss behaviors that are adverse to security, and the obligation of officers to report adverse behavior and other actions which could jeopardize the safety and security of the plant;

7. Communications with the NRC, to include the following: Development and submittal to the NRC of an initial report detailing specific information on the above actions, within approximately three months of issuance of the Confirmatory Order. Subsequent status reports will be submitted to the NRC approximately every six months, for a period of two years (four reports in total). At the end of this period (approximately 27 months following issuance of the Confirmatory Order), a management meeting between the NRC and WNS will occur. The process will be completed after 27 months unless reasonable cause exists for continuing with required reporting;

3. The NRC and WNS agreed that the above elements will be incorporated into issuance of a Confirmatory Order.

4. The NRC and WNS agreed that the elements as discussed at the ADR meeting of August 27, 2007, are subject to change based on WNS operational, management or industry considerations and with prior notice to the NRC.

IV

Because WNS has agreed to take actions to address the NRC's concerns, as set forth in section II above, the NRC has concluded that its concerns can be resolved through issuance of this Order.

I find that WNS' commitments set forth in section V below are acceptable and necessary, and I conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that WNS' commitments be confirmed by this Order. Based on the above and WNS' consent, this Order is immediately effective upon issuance.

V

Accordingly, pursuant to sections 104, 161b, 161i, 161o, and 186 of the Atomic Energy Act of 1954, as amended, the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 50, *It is hereby ordered*, effective immediately, that:

WNS will continue its initiatives in the following areas to achieve sustained enhancements in security, including:

1. A WNS New Hire/Recruitment Policy; WNS 102, ''New Hire Recruitment Policy'';

2. A Site Enhancement Plan related to the Turkey Point facility;

3. Development of an enhanced program for leadership development and WNS' desire to be ''best in class'';

4. Benchmarking to include audits, self-assessments, and Safety Conscious Work Environment;

5. Ideal Facility Performance Indicators for Turkey Point;

6. Continual Behavior Observation Program will include ''one-on-one'' discussions between supervisors and their direct reports to discuss behaviors that are adverse to security, and the obligation of officers to report adverse behavior and other actions which could jeopardize the safety and security of the plant;

7. Communications with the NRC, to include the following: Development and submittal to the NRC of an initial report detailing specific information on the above actions, within approximately three months of issuance of the Confirmatory Order. Subsequent status reports will be submitted to the NRC approximately every six months, for a period of two years (four reports in total). At the end of this period (approximately 27 months following issuance of the Confirmatory Order), a management meeting between the NRC and WNS will occur. The process will be completed after 27 months unless reasonable cause exists for continuing with required reporting;

The Regional Administrator, NRC Region II, may relax or rescind, in writing, any of the above conditions upon a showing by WNS of good cause.

VI

Any person adversely affected by this Confirmatory Order, other than WNS, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemakings and Adjudications Staff, Washington, DC 20555–0001. Copies of the hearing request shall also be sent to the Director,

Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; to the Assistant General Counsel for Materials Litigation and Enforcement, at the same address; to the Regional Administrator, NRC Region II, 61 Forsyth Street SW., Suite 23T85, Atlanta, GA 30303–8931; and to WNS. Because of the possible disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to (301) 415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. If a person other than WNS requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in section V above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in section V shall be final when the extension expires if a hearing request has not been received.

An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated this 22nd day of January 2008.

For the Nuclear Regulatory Commission.

Victor M. McCree,

Acting Regional Administrator.

[FR Doc. E8–1847 Filed 1–31–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Duke Energy Carolinas; Notice of Receipt and Availability of Application for a Combined License

By letter dated December 12, 2007, Duke Energy Carolinas (Duke, or the applicant) filed with the Nuclear Regulatory Commission (NRC, the Commission) pursuant to section 103 of the Atomic Energy Act and 10 CFR part 52, an application for a combined license (COL) for two AP1000 advanced passive pressurized water nuclear power reactors at a site in the eastern portion of Cherokee County in north central South Carolina, approximately 35 miles southwest of Charlotte, North Carolina, and approximately 7.5 miles southeast of Gaffney, South Carolina. The reactors are to be identified as William States Lee III Units 1 and 2.

An applicant may seek a COL in accordance with Subpart C of 10 CFR Part 52. The information submitted by the applicant includes certain administrative information such as financial qualifications submitted pursuant to 10 CFR 52.77, as well as technical information submitted pursuant to 10 CFR 52.79. The applicant also requested exemptions from certain requirements of section IV.A.2 of Appendix A to 10 CFR part 52 and 10 CFR 52.79(a)(44), as documented in part 7 of the application.

Subsequent **Federal Register** notices will address the acceptability of the tendered COL application for docketing and provisions for participation of the public in the COL review process.

Further Information

A copy of the application is available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, members of the public can access the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of the NRC's public documents. The ADAMS accession number for the application is ML073510494. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

The application may also be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee. The application is also available at *http://www.nrc.gov/reactors/new-licensing/col.html.*

Dated at Rockville, Maryland, this 23rd day of January, 2008.

For the Nuclear Regulatory Commission.

Joelle L. Starefos,

Senior Project Manager, AP1000 Projects Branch 1, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. E8–1838 Filed 1–31–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Week of February 4, 2008.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

ADDITIONAL MATTERS TO BE CONSIDERED:

Week of February 4, 2008

Thursday, February 7, 2008

12:55 p.m.

Affirmation Session (Public Meeting).

a. *Final Rule*—10 CFR 2.311 ''Interlocutory Review of Rulings on Requests for Hearings/Petitions to Intervene, Selection of Hearing Procedures, and Requests by Potential Parties for Access to SUNSI and Safeguards Information'' (RIN 3150–A108).

b. *Final Rule*—Regulatory Improvements to the Nuclear Materials Management and Safeguards System (RIN 3150–AH85).

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301–415–2279, TDD: 301–415–2100, or by e-mail at *REB3@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like

to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: January 29, 2008.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 08–475 Filed 1–30–08; 10:15 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collection for OMB Review; Comment Request; Liability for Termination of Single-Employer Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation (''PBGC'') is requesting that the Office of Management and Budget (''OMB'') extend approval, under the Paperwork Reduction Act, of a collection of information in its regulation on Liability for Termination of Single-Employer Plans, 29 CFR Part 4062 (OMB control number 1212–0017; expires February 29, 2008). This notice informs the public of the PBGC's request and solicits public comment on the collection of information.

DATES: Comments should be submitted by March 3, 2008.

ADDRESSES: Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, via electronic mail at *OIRA_DOCKET@omb.eop.gov* or by fax to (202) 395–6974. Copies of the collection of information may also be obtained without charge by writing to the Disclosure Division of the Office of the General Counsel of PBGC at the above address or by visiting the Disclosure Division or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.) PBGC's regulation on Liability for Termination of Single-employer Plans may be accessed on PBGC's Web site at *http://pbgc.gov/practitioners/law-regulations-informal-guidance/content/page14767.html.*

FOR FURTHER INFORMATION CONTACT: Thomas H. Gabriel, Attorney, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: Section 4062 of the Employee Retirement Income Security Act of 1974 provides that the contributing sponsor of a single-employer pension plan and members of the sponsor's controlled group (''the employer'') incur liability (''employer liability'') if the plan terminates with assets insufficient to pay benefit liabilities under the plan. The PBGC's statutory lien for employer liability and the payment terms for employer liability are affected by whether and to what extent employer liability exceeds 30 percent of the employer's net worth.

Section 4062.6 of the PBGC's employer liability regulation (29 CFR 4062.6) requires a contributing sponsor or member of the contributing sponsor's controlled group who believes employer liability upon plan termination exceeds 30 percent of the employer's net worth to so notify the PBGC and to submit net worth information. This information is necessary to enable the PBGC to determine whether and to what extent employer liability exceeds 30 percent of the employer's net worth.

The collection of information under the regulation has been approved by OMB under control number 1212–0017 (expires February 29, 2008). The PBGC is requesting that OMB extend its approval for three years. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The PBGC estimates that an average of five contributing sponsors or controlled group members per year will respond to this collection of information. The PBGC further estimates that the average annual burden of this collection of information will be 12 hours and $3,636 per respondent, with an average total annual burden of 60 hours and $18,120.

Issued in Washington, DC, this 29th day of January, 2008.

John H. Hanley,

Director, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation.

[FR Doc. E8–1874 Filed 1–31–08; 8:45 am]

BILLING CODE 7709–01–P

POSTAL SERVICE

Change in Rates of General Applicability for a Competitive Product

AGENCY: Postal Service.

ACTION: Notice of a change in rates of general applicability for a competitive product.

SUMMARY: This notice sets forth changes in rates of general applicability for a competitive product, specifically the establishment of prices for a Priority Mail large-sized flat-rate box.

DATES: *Effective Date:* March 3, 2008.

FOR FURTHER INFORMATION CONTACT: Daniel J. Foucheaux, Jr., 202–268–2989.

SUPPLEMENTARY INFORMATION: On January 17, 2008, pursuant to their authority under 39 U.S.C. 3632, the Governors of the Postal Service established prices for a new large-size Priority Mail flat-rate box. The Governors' Decision and the record of proceedings in connection with such decision are reprinted below in accordance with section 3632(b)(2). Implementing regulations are published elsewhere in this issue.

Neva R. Watson,

Attorney, Legislative.

Decision of the Governors of the United States Postal Service on the Priority Mail Large Flat-Rate Box (Governors' Decision No. 08–1)

January 17, 2008.

Statement of Explanation and Justification

Pursuant to our authority under section 3632 of title 39, as amended by the Postal Accountability and Enhancement Act of 2006, we establish the following prices for a new, larger (approximately 1/2 cubic foot) Priority Mail flat-rate box: $12.95 for domestic mail destined to most ZIP Codes, $10.95 for domestic mailed destined to APO/FPO ZIP Codes, $29.95 for international mail destined to Mexico and Canada, and $49.95 for international mail destined to all other countries. We have reviewed the attached analysis provided by management and have evaluated this change in accordance with 39 U.S.C. §§ 3632–3633 and 39 C.F.R. § 3015.2, which address changes in rates of general applicability for competitive services.

As background, we first approved the domestic flat-rate box as an experiment more than three years ago.[1] Subsequently, we concluded that the experiment was a success, and we approved a permanent classification for the flat-rate box as part of the recent omnibus rate case.[2] The existing box has a volume of 0.34 cubic feet, with a price of

[1] Governors' Decision on Docket No. MC2004–2 (October 29, 2004).

[2] Governors' Decision on Docket No. R2006–1, at 13–14 (March 19, 2007).

$8.95.[3] The Postal Service extended the flat-rate box to international mail in May 2007, at prices of $23.00 for mail destined to Canada and Mexico, and $37.00 for mail destined to all other countries.

The Priority Mail flat-rate box has proven to provide value to customers in the form of convenience and ease of use and has made a positive contribution to postal finances. This success suggests a place for an additional Priority Mail flat-rate box. Such an offering would enhance customer choice, convenience and ease of use. The larger box will have a cubic capacity of approximately 1/2 cubic foot, or about 50 percent more than the current flat-rate box.

As indicated in the attached analysis, the addition of this new option will benefit the Priority Mail flat-rate box rate category. Moreover, the lower rate for APO/FPO-destined ZIP Codes is justified by the analysis, and provides an opportunity for the Postal Service to assist American troops stationed abroad and their families.

Establishment of the larger flat-rate box is a minor change that does not raise an issue of subsidization of competitive products by market dominant products. (39 U.S.C. § 3633(a)(1)). The change will have no negative effects on the ability of Priority Mail or Priority Mail International to cover attributable costs (39 U.S.C. § 3633(a)(2)), or for competitive products as a whole to comply with 39 U.S.C. § 3633(a)(3), which, as implemented by 39 C.F.R. § 3015.7(c), requires competitive products to contribute a minimum of 5.5 percent to the Postal Service's total institutional costs.

Order

The prices specified above for the new flat-rate Priority Mail box shall be effective March 3, 2008. We direct the Secretary to have this decision published in the Federal Register in accordance with 39 U.S.C. § 3632(b)(2). We also direct management to file with the Postal Regulatory Commission appropriate notice of this change.

By The Governors:

James C. Miller III,
Chairman.

Analysis of the Priority Mail Large Flat-Rate Box

DOMESTIC

The Priority Mail large flat-rate box is 0.52 cubic feet (exterior), with dimensions of 12¼'' x 12¼'' x 6'' exterior and 12'' x 12'' x 5½'' interior.

Pricing

- $10.95 for Priority Mail shipments to APO/FPO addresses.
- $12.95 for Priority Mail shipments to all other addresses.

ESTIMATED PROFITABILITY

[FY 2007 Basis]

	Non-APO/FPO addresses	APO/FPO addresses
Price	$12.95	$10.95
Est. Unit Cost	$8.03	$8.46
Est. Unit Contribution	$4.92	$2.49
Implicit Cost Coverage	161%	129%

Note: Calculations include the incremental cost of packaging (over and above the approximately 10 cents per piece "baked in" to every Priority Mail rate cell).

Support for the Domestic Prices

Given the most recent price change, estimated domestic Priority Mail cost coverage is currently in the range of 135 to 140 percent. The $12.95 price reflects a premium comparable to that established for the original flat-rate box in 2004, which proved sufficient to protect against the risk of contribution leakage. A preferential $10.95 price is offered for shipments to APO/FPO addresses. These shipments account for only seven percent of total current flat-rate box volume. The price is sufficient to provide adequate contribution because of the unique demand characteristics of care-package shipments.

Compliance With Relevant Law

By sheer weight of volume, the primary use of the larger flat-rate box will be for general domestic Priority Mail shipments. Based on experience with the existing flat-rate box, the premium built into the $12.95 price is likely to produce an increase in contribution. Some contribution leakage is likely to result from lower-volume APO/FPO applications, but the amount should be minimal. As shown above, the Priority Mail large flat-rate box will easily cover its costs. Therefore, the domestic Priority Mail large flat-rate box is not expected to raise an issue of subsidization of competitive products by market dominant products (39 U.S.C. § 3633(a)(1)); or undermine the ability of Priority Mail to cover its attributable costs (39 U.S.C. § 3633(a)(2)); or undermine the ability of competitive products as a whole to comply with 39 U.S.C. § 3633(a)(3), which, as implemented by 39 CFR § 3015.7(c), requires competitive products to contribute a minimum of 5.5 percent to the Postal Service's total institutional costs.

INTERNATIONAL

The same flat-rate box will be used for Priority Mail International (PMI).

Pricing

- $29.95 for Priority Mail International shipments to Canada and Mexico.
- $49.95 for Priority Mail International shipments to the rest of the world.

ESTIMATED PROFITABILITY

[FY 2007 Basis]

	Canada and Mexico	All other countries
Price	$29.95	$49.95
Est. Unit Cost	$21.46	$39.83
Est. Unit Contribution	$8.49	$10.12
Implicit Cost Coverage	140%	125%

Support for the International Prices

The estimated overall Priority Mail International cost coverage is 128 percent. The Canada and Mexico price of $29.95 and the Rest-of-the-World price of $49.95 yield a weighted-average implicit cost coverage the same as PMI as a whole, 128 percent. The risk of contribution leakage is contained by the imposition of a 20-pound weight limit.

[3] Governors' Decision on Reconsideration, Docket No. R2006–1, at 1–2 (May 2, 2007).

Compliance With Relevant Law

The Priority Mail large flat-rate box will represent a small percentage of total Priority Mail International (PMI) volume. It, therefore, can have only a limited effect on total contribution, but it is designed to increase contribution by having a price set approximately at the average for similar-weight PMI pieces. It may also increase contribution by increasing total PMI usage. Any potential for contribution loss is partially offset by the imposition of a 20-pound limit. As shown above, the large flat-rate box will easily cover its costs. Therefore, the Priority Mail International large flat-rate box will not raise an issue of subsidization of competitive products by market dominant products (39 U.S.C. § 3633(a)(1)); or undermine the ability of Priority Mail International to cover its attributable costs (39 U.S.C. § 3633(a)(2)); or undermine the ability of competitive products as a whole to comply with 39 U.S.C. § 3633(a)(3), which, as implemented by 39 CFR § 3015.7(c), requires competitive products to contribute a minimum of 5.5 percent to the Postal Service's total institutional costs.

Certification of Governors' Vote in the Governors' Decision No. 08–1

I hereby certify that the following Governors voted by paper ballot on adopting Governors' Decision No. 08–1:

Mickey D. Barnett
James H. Bilbray
Carolyn Lewis Gallagher
Louis J. Giuliano
Alan C. Kessler
Thurgood Marshall, Jr.
James C. Miller III
Katherine C. Tobin
Ellen C. Williams

The vote was 9–0 in favor.

Wendy A. Hocking,
Secretary of the Board of Governors.

[FR Doc. E8–1778 Filed 1–31–08; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Change in Rates of General Applicability for a Competitive Product

AGENCY: Postal Service.

ACTION: Notice of a change in rates of general applicability for a competitive product.

SUMMARY: This notice sets forth changes in rates of general applicability for a competitive product, specifically the establishment of a premium for guaranteed delivery of Express Mail pieces on a Sunday or holiday.

EFFECTIVE DATE: March 3, 2008.

FOR FURTHER INFORMATION CONTACT: Daniel J. Foucheaux, Jr., 202–268–2989.

SUPPLEMENTARY INFORMATION: On January 17, 2008, pursuant to their authority under 39 U.S.C. 3632, the Governors of the Postal Service established a premium for guaranteed Sunday or holiday delivery of Express Mail pieces. The Governors' Decision and the record of proceedings in connection with such decision are reprinted below in accordance with § 3632(b)(2). Implementing regulations are published elsewhere in this issue.

Neva R. Watson,

Attorney, Legislative.

Decision of the Governors of the United States Postal Service on a Premium For Express Mail Pieces Guaranteed for Delivery on a Sunday or Holiday (Governors' Decision No. 08–2)

January 17, 2008

Statement of Explanation and Justification

Pursuant to our authority under section 3632 of title 39, as amended by the Postal Accountability and Enhancement Act of 2006, we establish a premium of $12.50 above the current price for delivery of non-manifest Express Mail pieces that are guaranteed for delivery on a Sunday or holiday. We have reviewed the attached analysis provided by management and have evaluated this change in accordance with 39 U.S.C. 3632–3633 and 39 CFR 3015.2, which address changes in rates of general applicability for competitive services.

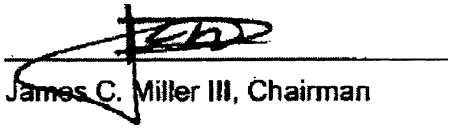
As indicated in the attached analysis, Express Mail pieces guaranteed for delivery on a Sunday or holiday pay the same price as pieces guaranteed for Monday through Saturday delivery, even though the Postal Service incurs additional costs of $5.50 for such pieces. The Postal Service is the only carrier in the highly competitive express delivery market that offers delivery on Sundays, as well as many holidays. The Postal Service's competitors charge at least $12.50 for items that are guaranteed for delivery on Saturday, a day on which they do not ordinarily provide delivery. The analysis of demand and contribution in the attachment indicates that it is likely a $12.50 premium on non-manifest Express Mail pieces presented for Sunday or holiday delivery will result in a net gain in contribution for both Express Mail service and for competitive products as a whole.

Based on this analysis, we find that this proposal complies with 39 U.S.C. 3633(a): The fee does not raise an issue of subsidization of competitive products by market dominant products (39 U.S.C. 3633(a)(1)); approving it would have no negative effects on the ability of Express Mail to cover its attributable costs (39 U.S.C. 3633(a)(2)); and it would not negatively effect the ability of competitive products as a whole to comply with 39 U.S.C. 3633(a)(3), which, as implemented by 39 CFR 3015.7 (c), requires competitive products to contribute a minimum of 5.5 percent to the Postal Service's total institutional costs. Indeed, the analysis indicates that this change should result in increased contribution for the Express Mail product, and for competitive products as a whole.

Order

Effective March 3, 2008, a premium of $12.50 shall be added to the price of each non-manifest Express Mail piece that is guaranteed for delivery on a Sunday or holiday. We direct the Secretary to have this decision published in the **Federal Register** in accordance with 39 U.S.C. 3632(b)(2). We also direct management to file with the Postal Regulatory Commission appropriate notice of this change.

By the Governors:



James C. Miller III, Chairman

Analysis of the Express Mail Sunday/Holiday Premium

The U.S. Postal Service currently accepts approximately 433,000 Express Mail pieces per year for Sunday or holiday delivery. A Sunday delivery costs the Postal Service $5.50 more than a Monday–Saturday delivery. A premium for Express Mail pieces committed for delivery on Sunday or a holiday is sustainable in the marketplace, and would allow the Postal Service to capture additional value provided by a unique, premium service. A $12.50 premium will be accepted by customers, generate additional contribution for the Postal Service, and provide protection from risk.

Price and Service Advantages in the Marketplace

The Postal Service is the only carrier to offer Sunday delivery, as well as delivery on many holidays. Other carriers impose a surcharge for Saturday delivery. UPS and FedEx currently charge an additional $12.50 for Saturday delivery; DHL charges $15.00. The Express Mail Sunday/Holiday premium would be equal to or less than what competitors charge for Saturday delivery.

The $12.50 charge also represents less of a premium over Monday–Saturday average prices than the surcharge other carriers charge for Saturday delivery. A charge of $12.50 represents a 72 percent premium over the current average Express Mail price, while the same amount adds 81 percent to the average price of an overnight FedEx or UPS parcel.

Rationale for the Premium Amount

$12.50 is a price point at which we can capture substantial contribution without diverting customers away from postal services. Because the premium represents the value of delivering on a non-business day and is equal to or lower than what competitors charge for a similar service, customers will likely accept a charge at this level.

There may be different demand for Sunday delivery than for other days of the week. Although overall Express Mail volume has decreased approximately 12 percent since the May 2007 rate change, volume for Sunday has actually risen more than 10 percent. Given the small volume delivered on Sunday, firm conclusions about elasticity cannot be drawn, yet the increase does suggest that Sunday Express Mail pieces are less price sensitive than the rest of Express Mail.

A $12.50 premium also provides protection in the event that Sunday delivery costs do not decrease quickly in response to a change in volume. Although there is currently a $5.50 cost difference between a Sunday delivery and a Monday–Saturday delivery, a reduction in Sunday deliveries may not result in short-term cost reductions, as staffing plans cannot be changed immediately, and because minimum staffing will need to be maintained. A premium of $12.50 provides additional margin to cover those costs.

Using data from the *FY 2007 Cost and Revenue Analysis*, and elasticities from the Docket No. R2006–1 omnibus rate case, a premium of $12.50 on non-manifest Express Mail pieces guaranteed for Sunday or holiday delivery will likely yield a pro-forma contribution increase between $3.1 million and $3.8 million. This increase results from additional revenue generated by the premium plus net cost savings from pieces that move out of Sunday delivery. Manifest pieces are exempt from the premium because the small number of these pieces does not justify changing the manifest system at this time.

Analysis of Sunday Delivery Demand and Contribution

Applying the system-wide Express Mail own-price elasticity implies a volume loss of slightly less than 250,000 Express Mail pieces; rather than disappear, however, the vast majority of these pieces will move into Express Mail guaranteed for Monday (or day after holiday) delivery or into Priority Mail. Express Mail pieces that move to Monday still increase contribution despite the lack of a premium, because of the extra cost of Sunday delivery. Contribution from pieces that migrate into Priority Mail will decrease only about 78 cents per piece, on average.

There is some risk to these projections. Assuming that 90 percent of the volume lost from Express Mail on Sunday will migrate to Monday delivery (about two-thirds) or Priority Mail (about 23 percent), and therefore stay within the Postal system. It will provide at least some contribution. It is possible, however, that these pieces might either switch to another carrier or disappear altogether (for instance, through electronic diversion of bill payments). To the extent that this possibility is underestimated, the net contribution increase resulting from the premium would be overestimated. If no lost volume migrates to Monday delivery, contribution gain will nonetheless be about half of the estimate, assuming that this Express Mail volume has an own-price elasticity of demand equal to or lower than that of Express Mail as a whole. If that assumption is not valid, contribution gain from the premium will be lower, though the price response would have to be more than twice that of the product as a whole before we would be at risk of a net loss of contribution.

These factors support the conclusion that a $12.50 premium on non-manifest Express Mail presented for Sunday or holiday delivery will result in a net gain in contribution for both Express Mail and for competitive products as a whole.

Compliance With Relevant Law

Because the premium will likely increase contribution for both Express Mail and for competitive products as a whole, this new premium will not raise an issue of subsidization of competitive products by market dominant products, (39 U.S.C. 3633(a)(1)), or have a negative effect on the ability of Express Mail to cover its attributable costs (39 U.S.C. 3633(a)(2)), or for competitive products as a whole to comply with 39 U.S.C. 3633(a)(3), which, as implemented by 39 CFR 3015.7 (c), requires competitive products to cover a minimum of 5.5 percent to the Postal Service's total institutional costs.

Certification of Governors' Vote in the Governors' Decision No. 08–2

I hereby certify that the following Governors voted by paper ballot on adopting Governors' Decision No. 08–2:

Mickey D. Barnett
James H. Bilbray
Carolyn Lewis Gallagher
Louis J. Giuliano
Alan C. Kessler
Thurgood Marshall, Jr.
James C. Miller III
Katherine C. Tobin
Ellen C. Williams
The vote was 9–0 in favor.

Dated: January 17, 2008.

Wendy A. Hocking,

Secretary of the Board of Governors.

[FR Doc. E8–1781 Filed 1–31–08; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 206(4)–4; SEC File No. 270–304; OMB Control No. 3235–0345.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collections of information discussed below.

The title for the collection of information is ''Rule 206(4)–4'' (17 CFR 275.206(4)–4) under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*). Rule 206(4)–4 requires advisers to disclose certain financial and disciplinary information to clients. The disclosure requirements in rule 206(4)–4 are designed so that a client will have information about an adviser's financial condition and disciplinary events that may be material to an evaluation of the adviser's integrity or ability to meet contractual commitments to clients. Respondents are registered investment advisers with certain disciplinary history or a financial condition that is reasonably likely to affect contractual commitments. We estimate that approximately 1,839 advisers are subject to this rule. The rule requires approximately 7.5 burden hours per year per adviser and amounts to approximately 13,793 total burden hours ($7.5 \times 1{,}839$) for all advisers.

The disclosure requirements of rule 206(4)–4 do not require recordkeeping or record retention. The collection of information requirements under the rule are mandatory. Information subject to the disclosure requirements of rule 206(4)–4 is not submitted to the Commission. Accordingly, the disclosures pursuant to the rules are not kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or e-mail to: *Alexander_T._Hunt@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: January 28, 2008.

Nancy M. Morris,

Secretary.

[FR Doc. E8–1840 Filed 1–31–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17e–1; SEC File No. 270–224; OMB Control No. 3235–0217.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information described below.

Rule 17e–1 (17 CFR 270.17e–1) under the Investment Company Act of 1940 (15 U.S.C. 80a) (the ''Act'') is entitled ''Brokerage Transactions on a Securities Exchange.'' The rule governs the remuneration that a broker affiliated with a registered investment company (''fund'') may receive in connection with securities transactions by the fund. The rule requires a fund's board of directors to establish, and review as necessary, procedures reasonably designed to provide that the remuneration to an affiliated broker is a fair amount compared to that received by other brokers in connection with transactions in similar securities during a comparable period of time. Each quarter, the board must determine that all transactions with affiliated brokers during the preceding quarter complied with the procedures established under the rule. Rule 17e–1 also requires the fund to (i) maintain permanently a written copy of the procedures adopted by the board for complying with the requirements of the rule; and (ii) maintain for a period of six years a written record of each transaction subject to the rule, setting forth: the amount and source of the commission; fee or other remuneration received; the identity of the broker; the terms of the transaction; and the materials used to determine that the transactions were effected in compliance with the procedures adopted by the board. The Commission's examination staff uses these records to evaluate transactions between funds and their affiliated brokers for compliance with the rule.

The Commission staff estimates that 3583 portfolios of approximately 649 fund complexes use the services of one or more subadvisers. Based on discussions with industry representatives, the staff estimates that it will require approximately 6 hours to draft and execute revised subadvisory contracts in order for funds and subadvisers to be able to rely on the exemptions in rule 17e–1.[1] The staff assumes that all existing funds amended their advisory contracts following amendments to rule 17e-1 in 2002 that conditioned certain exemptions upon these contractual alterations, and therefore there is no continuing burden for those funds.[2]

Based on an analysis of fund filings, the staff estimates that approximately 600 fund portfolios enter into subadvisory agreements each year.[3] Based on discussions with industry representatives, the staff estimates that it will require approximately 3 attorney hours[4] to draft and execute additional clauses in new subadvisory contracts in order for funds and subadvisers to be able to rely on the exemptions in rule 17e–1. Because these additional clauses are identical to the clauses that a fund would need to insert in their subadvisory contracts to rely on rules 12d3–1, 10f–3, 17a–10, and because we believe that funds that use one such rule generally use all of these rules, we apportion this 3 hour time burden equally to all four rules. Therefore, we estimate that the burden allocated to rule 17e–1 for this contract change would be 0.75 hours.[5] Assuming that all 600 funds that enter into new subadvisory contracts each year make the modification to their contract required by the rule, we estimate that the rule's contract modification requirement will result in 450 burden hours annually, with an associated cost of approximately $131,400.[6]

Based on an analysis of fund filings, the staff estimates that approximately 300 funds use at least one affiliated broker. Based on conversations with fund representatives, the staff estimates that rule 17e–1's exemption would free approximately 40 percent of transactions that occur under rule 17e–1 from the rule's recordkeeping and review requirements. This would leave approximately 180 funds (300 funds × .6 = 180) still subject to the rule's recordkeeping and review requirements. The staff estimates that each of these funds spends approximately 60 hours per year (40 hours by accounting staff, 15 hours by an attorney, and 5 director hours)[7] at a cost of approximately $10,495 per year to comply with rule 17e–1's requirements that (i) the fund retain records of transactions entered into pursuant to the rule, and (ii) the fund's directors review those transactions quarterly.[8] We estimate, therefore, that the total yearly hourly burden for all funds relying on this exemption is 10,800 hours,[9] with yearly costs of approximately $1,889,100.[10] Therefore, the annual aggregate burden hour associated with rule 17e–1 is 11,250,[11] and the annual aggregate cost associated with it is $2,020,500.[12]

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or e-mail to: *Alexander_T._Hunt@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley

[1] Rules 12d3–1, 10f–3, 17a–10, and 17e–1 require virtually identical modifications to fund advisory contracts. The Commission staff assumes that funds would rely equally on the exemptions in these rules, and therefore the burden hours associated with the required contract modifications should be apportioned equally among the four rules.

[2] We assume that funds formed after 2002 that intended to rely on rule 17e–1 would have included the contract provision in their initial subadvisory contracts.

[3] The use of subadvisers has grown rapidly over the last several years, with approximately 600 portfolios that use subadvisers registering between December 2005 and December 2006. Based on information in Commission filings, we estimate that 31 percent of funds are advised by subadvisers.

[4] The Commission staff's estimates concerning the wage rates for attorney time are based on salary information for the securities industry compiled by the Securities Industry Association. The $292 per hour figure for an attorney is from the SIA Report on Management & Professional Earnings in the Securities Industry 2006, modified to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[5] This estimate is based on the following calculation (3 hours 4 rules = .75 hours).

[6] These estimates are based on the following calculations: (0.75 hours × 600 portfolios = 450 burden hours); ($292 per hour × 450 hours = $131,400 total cost).

[7] The Commission staff's estimates concerning the wage rate for professional time are based on salary information for the securities industry compiled by the Securities Industry Association. The $292 per hour estimate for an attorney, $116 per hour estimate for accountant time, and $295 per hour estimate for directors (based on comparable position) is from the SIA Report on Management & Professional Earnings in the Securities Industry 2006, modified to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[8] This estimate is based on the following calculations: (40 hours accounting staff × $116 per hour = $4640) (15 hours by an attorney × $292 per hour = $4380); (5 hours by directors × $295 = $1475) ($4640 + $4380 + $1475 = $10,495 total cost).

[9] This estimate is based on the following calculation: (180 funds × 60 hours = 10,800).

[10] This estimate is based on the following calculation: ($10,495 × 180 funds = $1,889,100).

[11] This estimate is based on the following calculation: (450 hours + 10,800 hours = 11,250 total hours).

[12] This estimate is based on the following calculation: ($131,400 + $1,889,100= $2,020,500).

Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: January 28, 2008.

Nancy M. Morris,

Secretary.

[FR Doc. E8–1841 Filed 1–31–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 203–2 and Form ADV–W; SEC File No. 270–40; OMB Control No. 3235–0313.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

The title for the collection of information is ''Rule 203–2 (17 CFR 275.203–2) and Form ADV–W (17 CFR 279.2) under the Investment Advisers Act of 1940 (15 U.S.C. 80b).'' Rule 203–2 under the Investment Advisers Act of 1940 establishes procedures for an investment adviser to withdraw its registration with the Commission. Rule 203–2 requires every person withdrawing from investment adviser registration with the Commission to file Form ADV–W electronically on the Investment Adviser Registration Depository (''IARD''). The purpose of the information collection is to notify the Commission and the public when an investment adviser withdraws its pending or approved SEC registration. Typically, an investment adviser files a Form ADV–W when it ceases doing business or when it is ineligible to remain registered with the Commission.

The potential respondents to this information collection are all investment advisers registered with the Commission. The Commission has estimated that compliance with the requirement to complete Form ADV–W imposes a total burden of approximately 0.75 hours (45 minutes) for an adviser filing for full withdrawal and approximately 0.25 hours (15 minutes) for an adviser filing for partial withdrawal. Based on historical filings, the Commission estimates that there are approximately 500 respondents annually filing for full withdrawal and approximately 500 respondents annually filing for partial withdrawal. Based on these estimates, the total estimated annual burden would be 500 hours ((500 respondents × .75 hours) + (500 respondents × .25 hours)).

Rule 203–2 and Form ADV–W do not require recordkeeping or records retention. The collection of information requirements under the rule and form are mandatory. The information collected pursuant to the rule and Form ADV–W are filings with the Commission. These filings are not kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or e-mail to: *Alexander_T._Hunt@omb.eop.gov*; and (iii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: January 28, 2007.

Nancy M. Morris,

Secretary.

[FR Doc. E8–1843 Filed 1–31–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 203–3, Form ADV–H; SEC File No. 270–481; OMB Control No. 3235–0538.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

The title for the collection of information is ''Rule 203–3 and Form ADV–H under the Investment Advisers Act of 1940.'' Rule 203–3 (17 CFR 275.203–3) under the Investment Advisers Act of 1940 (15 U.S.C. 80b) establishes procedures for an investment adviser to obtain a hardship exemption from the electronic filing requirements of the Investment Advisers Act. Rule 203–3 requires every person requesting a hardship exemption to file Form ADV–H (17 CFR 279.3) with the Commission. The purpose of this collection of information is to permit advisers to obtain a hardship exemption, on a continuing or temporary basis, to not complete an electronic filing. The temporary hardship exemption permits advisers to make late filings due to unforeseen computer or software problems, while the continuing hardship exemption permits advisers to submit all required electronic filings on hard copy for data entry by the operator of the IARD.

The respondents to the collection of information are all investment advisers that are registered with the Commission. The Commission has estimated that compliance with the requirement to complete Form ADV–H imposes a total burden of approximately 1 hour for an adviser. Based on our experience with hardship filings, we estimate that we will receive 11 Form ADV–H filings annually. Based on the 60 minute per respondent estimate, the Commission estimates a total annual burden of 11 hours for this collection of information.

Rule 203–3 and Form ADV–H do not require recordkeeping or records retention. The collection of information requirements under the rule and form are mandatory. The information collected pursuant to the rule and Form ADV–H consists of filings with the Commission. These filings are not kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or e-mail to: *Alexander_T._Hunt@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley

Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: January 28, 2008.

Nancy M. Morris,

Secretary.

[FR Doc. E8–1844 Filed 1–31–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57207; File No. SR–ISE–2007–95]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of a Proposed Rule Change, as Modified by Amendment Nos. 2 and 3, Relating to Reserve Orders

January 25, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 12, 2007, the International Securities Exchange, LLC (''ISE'' 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. The ISE filed Amendment Nos. 1 and 2 to the proposal on January 17, 2008.[3] On January 25, 2008, the ISE filed Amendment No. 3 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add a new order type called Reserve Orders. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.ise.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. *Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to implement a new order type called Reserve Orders. A Reserve Order is a single-sided limit order that resides in the Exchange's regular limit order book and has both a displayed portion and a non-displayed or reserve portion. The displayed portion would behave exactly like a regular order and would trade in accordance with the Exchange's standard allocation rules, *i.e.*, time priority for customers and pro-rata for non-customers.[5] The following examples illustrate how Reserve Orders will trade on the Exchange:

Example 1:

The Exchange's order book shows the following at the Best Bid:

10 contracts (100 contracts in reserve)—Customer 1
12 contracts—Customer 2
25 contracts—Competitive Market Maker
20 contracts (500 contracts in reserve)—Broker/Dealer

An order comes in to sell 50 contracts at market. This order would be executed with the displayed customer orders trading in time priority followed by non-customers pro-rata, as follows:

10 contracts trade with Customer 1
12 contracts trade with Customer 2
16 contracts trade with Competitive Market Maker (''CMM''): This allocation is calculated as follows: $(25/45) \times 28$, where the numerator (25) is the number of contracts that a CMM is willing to trade, and the denominator (45) is the number of contracts that are available for execution. The resulting number (0.5555) is then multiplied by the number of contracts that have not been executed (28).

The remaining 11 contracts trade with the Broker/Dealer.

Example 2:

The Exchange's order book shows the same at the Best Bid as in Example 1:

An order to sell 200 contracts at market will be executed as follows:

10 contracts trade with Customer 1
12 contracts trade with Customer 2
25 contracts trade with CMM
20 contracts trade with the Broker/Dealer
100 contracts (the entire reserve portion of Customer 1) trade with Customer 1
33 contracts (from the 500 contracts in reserve) trade with the Broker/Dealer

When the displayed portion of a Reserve Order is decremented, either in full or in part, it shall be refreshed from the non-displayed portion of the resting Reserve Order. If the displayed portion is refreshed in part, the new displayed portion shall include the previously displayed portion. Upon any refresh, the entire displayed portion shall be ranked at the specified limit price, assigned a new entry time and given priority in accordance with Rule 713.

The non-displayed portion of Reserve Orders shall be ranked based on the specified limit price and the time of order entry. Upon any refresh, any remaining non-displayed portion shall be assigned a new time stamp, same as that assigned to the newly displayed portion. The non-displayed portion of any Reserve Order is available for execution only after all displayed interest has been executed.

The Exchange notes that the full size, *i.e.*, both the displayed and non-displayed portions, of an incoming Reserve Order will be available for execution if that incoming order is marketable. Further, in the event an incoming order is large enough to trade through all displayed quantities, the non-displayed quantities of all resting Reserve Orders will be eligible to trade, again in accordance with the Exchange's standard allocation rules.

The Exchange believes that the new order type proposed in this rule change will provide greater flexibility to members to control their orders. By offering this new order type, members will be able to determine how much of their order they want disseminated at any point in time and help them eliminate the need to enter multiple orders in one series. The Exchange states that this new functionality will be purely voluntary and is similar to that currently offered[6] or proposed[7] by other options exchanges.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 2 replaces the original filing and Amendment No. 1 in their entirety.

[4] Amendment No. 3 clarifies portions of the purpose section of the proposed rule change.

[5] *See* ISE Rule 713 and Supplementary Material .01 thereto.

[6] *See* NYSE Arca Rule 6.76(a).

[7] *See* Securities Exchange Act Release No. 55667 (April 25, 2007), 72 FR 23869 (May 1, 2007) (SR–NASDAQ–2007–004) (Notice of Filing of Proposed Rule Change and Amendment No. 1 To Establish Rules Governing the Trading of Options on the NASDAQ Options Market).

6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(5) of the Act,[9] in particular, in that it is designed to prevent fraudulent and manipulative acts, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that this new order type will offer market participants new trading opportunities on the Exchange and enhance the Exchange's competitive position.

B. *Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. *Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

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 the 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–ISE–2007–95 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2007–95. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2007–95 and should be submitted on or before February 22, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–1834 Filed 1–31–08; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57204; File No. SR–NYSE–2008–05]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Eliminate the One-Year Minimum Life Requirement From the Listing Standards for ''Other Securities''

January 25, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 15, 2008, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared substantially by NYSE. This order provides notice of the proposed rule change and approves the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section 703.19 of the Exchange's Listed Company Manual (''Manual''), which sets forth the initial listing standards for ''Other Securities,'' to eliminate the requirement that securities listed thereunder must have a minimum life of one year. The text of the proposal is available at NYSE, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below, and the most significant aspects of such statements are set forth in Sections A, B, and C below.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Section 703.19 of the Manual, which sets forth the Exchange's initial listing standards for ''Other Securities,'' to eliminate the requirement that securities listed thereunder must have a minimum life of one year. The Exchange seeks to make this change to harmonize Section 703.19 of the Manual with the comparable rules of The NASDAQ Stock Market LLC (''NASDAQ''), the American Stock Exchange LLC (''Amex''), and NYSE Arca Equities, Inc. (''NYSE Arca Equities''), none of which contain a minimum life requirement.[3]

2. Statutory Basis

The proposed rule change is consistent with Section 6 of the Act,[4] in general, and furthers the objectives of Section 6(b)(5),[5] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. Specifically, the Exchange believes that the proposed rule change seeks to remove impediments to and perfect the mechanism of a free and open market by conforming NYSE's listing rules to those of its competitors, enabling the Exchange to compete for listings of securities that can currently be listed under the rules of the Exchange's competitors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange states that written comments on the proposed rule change were neither solicited nor received.

[3] *See* NASDAQ Rule 4420(f), Section 107(A) of the Amex *Company Guide,* and NYSE Arca Equities Rule 5.2(j)(1), respectively.

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(5).

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2008–05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2008–05. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2008–05 and should be submitted on or before February 22, 2008.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[7] which requires that the rules of an exchange be designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that comparable rules of other national securities exchanges currently do not require such ''Other Securities'' to have a minimum life of one year.[8]

The Commission finds good cause for approving this proposal before the 30th day after the publication of notice thereof in the **Federal Register**. As noted above, the proposal seeks to harmonize the Exchange's initial listing standards for ''Other Securities'' with those of other national securities exchanges. The initial listing standards for ''Other Securities'' of such other national securities exchanges do not appear to present any new or significant regulatory concerns. Therefore, the Commission believes that accelerating approval of this proposal would allow the Exchange to trade such ''Other Securities'' without undue delay and should generate additional competition in the market for such products.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–NYSE–2008–05) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–1833 Filed 1–31–08; 8:45 am]

BILLING CODE 8011–01–P

[6] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] *See supra* note 3.

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57214; File No. SR–NASDAQ–2007–096]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To Modify the Allocation of the Maximum Time an Adjudicatory Body May Grant a Company To Regain Compliance With the Listing Requirements Without Modifying the Maximum Time Available Under Nasdaq Rule 4802

January 28, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 3, 2007, The NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by Nasdaq. 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

Nasdaq proposes to modify the allocation of the maximum time an adjudicatory body may grant a company to regain compliance with the listing requirements. Nasdaq will implement the proposed rule immediately upon approval.

The text of the proposed rule change appears below. Proposed new language is italicized and proposed deletions are in brackets.[3]

* * * * *

4802. Purpose and General Provisions

(a) No change.

(b) An issuer may file a written request for an exception to any of the standards set forth in the Rule 4000 Series at any time during the pendency of a proceeding under the Rule 4800 Series. A Listing Qualifications Panel may grant exceptions for a period not to exceed [the earlier of 90 days from the date of the Panel Decision or] 180 days from the date of the Staff Determination with respect to the deficiency for which the exception is granted, and the Listing Council may grant exceptions for a period not to exceed [the earlier of 60 days from the date of the Listing Council Decision or 180] *360* days from the date of the [Panel Decision] *Staff Determination* with respect to the deficiency for which the exception is granted, in each case where it deems appropriate.

(c)—(f) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to modify provisions in the ''Procedure for Review of Nasdaq Listing Determinations'' relating to the allocation of the maximum time an adjudicatory body may grant a company to regain compliance with the listing requirements (''Exception Period''). This proposal would not increase the maximum time potentially available under the rule.

Under the current rules, the Exception Period a Listing Qualifications Panel (''Panel'') can grant is limited to the lesser of 180 days from the date that Nasdaq staff sends a delisting letter (''Staff Determination'') or 90 days from the date of the Panel's decision in the matter. Similarly, the maximum Exception Period that the Nasdaq Listing and Hearing Review Council (''Listing Council'') can grant when reviewing a Panel decision is limited to the lesser of 180 days from the date of the Panel decision on review or 60 days from the date of the Listing Council's decision in the matter. As a result, while the maximum cumulative exception these bodies can grant is 360 days from the date of the Staff Determination, the actual amount of time can vary from company to company based on how quickly the company is scheduled for a hearing and the speed with which the Panel and Listing Council decisions are prepared.[4] This variability creates uncertainty for Nasdaq-listed companies and their investors regarding the maximum amount of time available under an exception.

In order to eliminate these differences and provide certainty to companies and investors regarding the Nasdaq delisting process, Nasdaq proposes to modify the computation of the maximum Exception Period such that the maximum time that a Panel can provide is 180 days from the date of the Staff Determination and the maximum time that the Listing Council can provide is 360 days from the date of the Staff Determination. As such, this proposal will eliminate the competing deadlines that are based on variable events, such as the amount of time it takes to schedule a hearing and issue decisions reflecting the Panel or Listing Council's conclusions. As is presently the case, these adjudicatory bodies may grant a company a shorter Exception Period, or no Exception Period at all, based on their analysis of the applicable facts and circumstances.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Section 6(b)(5) of the Act,[6] in particular. Nasdaq believes that the proposed rule change is designed to provide additional transparency to Nasdaq's process surrounding the review of delisting determinations, thereby protecting investors and removing an impediment to a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at *http://nasdaq.complinet.com.*

[4] These time frames are influenced by factors including the number of companies in the process at a given time and the availability of Panel or Listing Council members for the review and approval of drafts.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2007–096 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2007–096. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2007–096 and should be submitted on or before February 22, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–1832 Filed 1–31–08; 8:45 am]

BILLING CODE 8011–01–P

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57212; File No. SR–NASDAQ–2008–004]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change Related to Supplemental Market Participant Identifiers

January 28, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 [2] thereunder, notice is hereby given that on January 9, 2008, The NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by Nasdaq. 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

Nasdaq proposes to make permanent the pilot program that allows market makers and Electronic Communications Networks (''ECNs'') to obtain supplemental market participant identifiers (''MPIDs''). Nasdaq also proposes to remove any restrictions on the number of MPIDs market participants can request. The text of the proposed rule change is available at Nasdaq, the Commission's Public Reference Room and nasdaq.complinet.com.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis, for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to make permanent the pilot program incorporated in Nasdaq Rule 4613(a)(2) (''Rule'') that allows market makers and ECNs to obtain supplemental MPIDs. The pilot inadvertently was permitted to lapse on November 30, 2006. The Rule has operated as a temporary pilot since it was first adopted in June 2003 and although the pilot lapsed, Nasdaq continued to apply the procedures set forth in the Rule and the related interpretive material.[3] The purpose of providing supplemental MPIDs is to provide quoting market participants a better ability to organize and manage diverse order flows from their customers and to route orders and quotes to Nasdaq's listed trading facilities from different units/desks. To the extent that this flexibility provides increased incentives to provide liquidity to Nasdaq systems, Nasdaq believes that all market participants benefit. Because the Rule has benefited market makers and ECNs and has not had any negative impact on the Nasdaq market in the more than four years that it has been in place, Nasdaq believes the Rule should become permanent.

Nasdaq also proposes to remove the current restriction in the Rule that limits the number of supplemental MPIDs that market makers and ECNs can request for displaying attributable quotes or orders. In accordance with the pilot program, market makers and ECNs may be issued a maximum of nine supplemental MPIDs. The reason for this restriction was a technological limitation that existed at the time the Rule was adopted, but this limitation no longer exists. Therefore, Nasdaq proposes to remove the restriction.

In addition, Nasdaq proposes to remove IM–4613, which sets forth the procedures for allocating supplemental MPIDs. The removal of Nasdaq's technological limitation on the number of MPIDs for a given security makes the procedures unnecessary.

The decision to remove any restriction on the number of supplemental MPIDs must be balanced against the need to protect the integrity of the Nasdaq market. Accordingly, market makers and ECNs would be prohibited from using a supplemental MPID to accomplish indirectly what they are prohibited from doing directly through a single MPID. For example, members would not be permitted to use a supplemental MPID to avoid their Manning obligations under IM–2110–2, best execution obligations under Nasdaq Rule 2320, or their obligations under the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 47954 (May 30, 2003), 68 FR 34017 (June 6, 2003). *See also* IM–4613—Procedures for Allocation of Second Displayable MPIDs.

Commission's Order Handling Rules. Members would be required to continue to comply with the firm quote rule, the OATS rules, and the Commission's order routing and execution quality disclosure rules.

If it were determined that a supplemental MPID was being used improperly, Nasdaq would withdraw its grant of the supplemental MPID for all purposes for all securities. In addition, if a market maker or ECN were no longer to fulfill the conditions appurtenant to its primary MPID (*e.g.*, by being placed into an unexcused withdrawal), it would not be permitted to use any supplemental MPID for any purpose in that security.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,[4] in general and with Section 6(b)(5) of the Act,[5] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. There no longer remains any market or technological need to restrict the number of MPIDs market participants can request.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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–NASDAQ–2008–004 on the subject line.

Paper Comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2008–004. 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 at (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NASDAQ–2008–004 and should be submitted on or before February 22, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–1835 Filed 1–31–08; 8:45 am]

BILLING CODE 8011–01–P

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57181; File No. SR–Amex–2007–132]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving a Proposed Rule Change as Modified by Amendment No. 1 Thereto To Include Volume Executed by Remote Quoting Towards the Earning of Remote Quoting Rights

January 22, 2008.

On November 30, 2007, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Amex Rule 994–ANTE to include the volume executed remotely by specialists and registered options traders (''ROTs) towards the earning of remote quoting rights in the Exchange's remote registered options trader (''RROT'') program (''RROT Program''). On December 13, 2007, Amex filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on December 21, 2007.[3] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

The Exchange's RROT Program currently allows members or member organizations designated by the Exchange to be awarded remote quoting rights to enter bids and offers electronically from locations other than the trading crowd where the applicable options class is traded on the Exchange's physical trading floor.[4] ROTs and specialists are currently awarded remote quoting rights based on

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 56974 (December 17, 2007), 72 FR 72803.

[4] *See* Securities Exchange Act Release No. 53652 (April 13, 2006), 71 FR 20422 (April 20, 2006) (approving the Exchange's RROT Program).

quantitative criteria set forth in Amex Rule 994–ANTE. Specifically, specialists are awarded remote quoting rights based on Exchange floor volume executed, and their percentage of industry market share in the options in which they specialize. ROTs are awarded remote quoting rights based solely on floor volume executed.

Currently, volume executed as a result of quoting remotely is not included in the calculation of remote quoting rights in Rule 994–ANTE. However, according to the Exchange, since the implementation of the RROT Program in May of 2006, volume is increasingly executed as a result of remote quotes entered by ROTs and specialists. The Exchange believes it is appropriate to reward those ROTs and specialists for the volume they execute as a result of quoting remotely, by including such volume towards the earning of additional remote quoting rights.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[6] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. Volume executed as a result of quoting remotely, as well as volume executed on the floor, contributes to liquidity in a class. The Commission therefore believes that it is appropriate and consistent with the Act for the Exchange to include volume executed remotely by specialists and ROTs in the calculation of remote quoting rights on the Exchange.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–Amex–2007–132), as modified by Amendment No. 1 thereto, is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–1788 Filed 1–31–08; 8:45 am]

BILLING CODE 8011–01–P

[5] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57197; File No. SR–CBOE–2008–06]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Fees for CBOE Stock Exchange Permit Applicants

January 24, 2008.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'') and Rule 19b–4 thereunder,[2] notice is hereby given that on January 15, 2008, 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 substantially prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) 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 Exchange proposes to modify its fees applicable to CBOE Stock Exchange (''CBSX'') permit applicants. The text of the proposed rule change is available at the Exchange, at the Commission's Public Reference Room, and on the Exchange's Internet Web site at *http://www.cboe.org/legal*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend the CBSX fee schedule to allow for a stand-alone fee for CBSX permit applicants. CBOE Rule 3.26 established the CBSX Permit Program which allows the Exchange to issue up to 100 trading permits that confer the ability to transact on CBSX without the necessity of acquiring a regular Exchange membership through purchase, lease, or otherwise. The CBSX fee schedule lists the fees applicable to CBSX users. Initially, CBSX permit applicants were charged application fees consistent with the CBOE Fee Schedule for new membership applications. The Exchange now seeks to establish a stand-alone CBSX permit application fee of $1000 that would cover all aspects of the application process. This fee amount provides a cost savings to CBSX permit applicants because it is less than the current costs assessed to CBOE new member applicants. The proposed rule change will be implemented Wednesday, January 16, 2008.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(4) of the Act,[6] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and other persons using its facilities.

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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A)(ii)[7] of the Act and Rule 19b–4(f)(2)[8] thereunder because it establishes or changes a due, fee, or other charge applicable only to a member imposed by the Exchange. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2008–06 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–2008–06. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also 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 No. SR–CBOE–2008–06 and should be submitted on or before February 22, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–1789 Filed 1–31–08; 8:45 am]

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[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57203; File No. SR–CHX–2007–18]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Make Administrative Changes to Its Routing Rules

January 25, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 6, 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 the CHX. On January 22, 2008, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to amend its rules to make administrative changes that are designed to allow third-party routers to provide better service to their customers. The text of this proposed rule change is available at the CHX, on the Exchange's Web site at *http://www.chx.com/rules/proposed_rules.htm*, and in 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 CHX 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 CHX 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 rules, the Exchange's Matching System will not execute an order if its execution would be improper under Rule 611 of Regulation NMS under the Act (an ''improper trade-through'').[3] Similarly, the Exchange's Matching System will not display an order if its display would improperly lock or cross other markets.[4] In these situations, the Exchange either cancels the order back to the participant that submitted it or routes the order to the destination of the participant's choice, all at the direction of the participant.[5]

Under this proposal, the Exchange seeks to make three administrative changes to its routing rules to permit these third-party routers to provide better service to their customers. The

[3] *See* Article 20, Rule 5.

[4] *See* Article 20, Rule 6.

[5] The participant is responsible for ensuring that it has a relationship with its chosen destination to permit the requested access. The Exchange is not involved in the execution of the order—any execution of the order is the responsibility of the destination to which the order was sent. The Exchange, however, reports any execution or cancellation of the order by the other destination to the participant that submitted the order and notifies the other venue of any cancellations or changes to the order submitted by the order-sending participant. *See* Article 20, Rule 5, Interpretation and Policy .03(b).

first proposed change would allow a participant and a routing destination to request that the CHX flip any executions into the participant's account and report that second leg of the away-market transaction to clearing.[6] This service would give the order-sending participant the option of consolidating its clearing reports in specific locations.

The second proposed change would allow the CHX (and a routing destination) to determine whether additional agreements with CHX participants are needed to implement the routing functionality for all orders, except a cross with satisfy or an outbound ISO.[7] While the CHX believes that most routing destinations will require that order-senders sign additional agreements for any services that the destinations might provide, the CHX wants to provide flexibility for destinations to make choices appropriate to their business models.

Finally, the third proposed change would allow a participant to ask its chosen destination to use the participant's own give-up (rather than the routing destination's give-up) when routing orders to other markets as part of a cross with satisfy or an outbound ISO.[8] We believe that some participants—that already have good give-ups in other markets—might prefer that the routing service use those give-ups rather than its own.

The Exchange believes that these proposed changes do not substantially change the existing routing process, but instead simply provide additional flexibility to the third-party routing services that participants might desire to use.[9]

2. Statutory Basis

The CHX believes 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).[10] The proposed rule change is consistent with Section 6(b)(5) of the Act[11] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest by allowing the Exchange to provide additional flexibility to its participants and the destinations to which the Exchange should route their orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes 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 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–CHX–2007–18 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CHX–2007–18. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CHX–2007–18 and should be submitted on or before February 22, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

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[6] For example, if the Exchange routes a participant's buy order to the participant's chosen destination (Router ABC) and Router ABC gets an execution of that order in another market against market maker XYZ, the first leg of the transaction (ABC buying from XYZ) will be reported to clearing by the other market. The Router ABC would send an execution report back to the Exchange (for routing to the original order-sending participant). Under this proposal, if the participant and Router ABC had requested, the Exchange would take the execution report and create a clearing-only record, flipping the execution from Router ABC's account to the account of the order-sending participant (ABC selling to the order-sending participant).

[7] The routing of an outbound ISO or a cross with satisfy will be provided pursuant to the agreements described in section (c)(1) of Interpretation .03 to Rule 5, to the extent that the agreements are applicable to a specific routing decision. *See* Article 20, Rule 5, Proposed Interpretation and Policy .03(c)(1).

[8] *See* Article 20, Rule 5, Proposed Interpretation and Policy .03(c).

[9] Because these proposals do not make substantive changes to the Exchange's routing structure, the Exchange believes that its routing of orders to a participant's chosen destination would continue to be a facility of the Exchange, but the destinations chosen by each participant would not constitute Exchange facilities.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[(Release No. 34–57217; File No. SR–FINRA–2008–003]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Regarding the Use of Multiple MPIDs on the Trade Reporting Facilities and the Alternative Display Facility

January 28, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 18, 2008, the Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by FINRA. FINRA has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend NASD Rules 4613A and 5140 to extend through January 30, 2009, the current rules regarding the use of multiple Market Participant Symbols (''MPIDs'') on the Trade Reporting Facilities (''TRFs'') and the Alternative Display Facility (''ADF''). The text of the proposed rule change is available at *http://www.finra.org*, the principal office of FINRA, and the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

(A) *NASD Rule 4613A and IM–4613A–1*

NASD Rule 4613A(b) (Character of Quotations) provides that a Registered Reporting ADF electronic communications network (''ECN'') may request additional MPIDs for displaying quotes and orders and reporting trades through the ADF trade reporting facility, the Trade Reporting and Comparison Service, for any ADF-Eligible Security. A Registered Reporting ADF ECN that is permitted the use of additional MPIDs for displaying quotes and orders is subject to the same rules applicable to the member's first quotation (*i.e.*, an ECN that displays one or more additional quotes/orders is required to comply with all rules applicable to ECNs in their display of quotes/orders). A Registered Reporting ADF ECN is also prohibited from using an additional MPID to accomplish indirectly what it is prohibited from doing directly through its Primary MPID. In addition, FINRA staff retains full discretion to determine whether a bona fide regulatory and/or business need exists for being granted an additional MPID and to limit or withdraw the additional MPID display privilege at any time. The procedures for requesting, and the restrictions surrounding the use of, multiple MPIDs are set forth in IM–4613A–1 (Procedures for Allocation of Multiple MPIDs).

The Commission approved NASD Rule 4613A(b) and IM–4613A–1 on a pilot basis on August 11, 2006.[5] By its terms, the initial pilot period expired on January 26, 2007.[6] On January 31, 2007, the Commission approved a one-year extension of the pilot period until January 25, 2008.[7] FINRA believes that an additional one-year extension until January 30, 2009, will provide additional time to analyze the use of multiple MPIDs on the ADF. FINRA is not proposing any other changes to the pilot as this time.

(B) *NASD Rule 5140 and IM–5140*

NASD Rule 5140 (Multiple MPIDs for Trade Reporting Facility Participants) provides that any Trade Reporting Facility Participant that wishes to use more than one MPID for purposes of reporting trades to a TRF must submit a written request to, and obtain approval from, NASD Operations for such additional MPIDs. In addition, IM–5140 (Use of Multiple MPIDs) states that FINRA considers the issuance of, and trade reporting with, multiple MPIDs to be a privilege and not a right. A Trade Reporting Facility Participant must identify the purpose(s) and system(s) for which the multiple MPIDs will be used. If FINRA determines that the use of multiple MPIDs is detrimental to the marketplace, or that a Trade Reporting Facility Participant is using one or more additional MPIDs improperly or for other than the purpose(s) identified by the Participant, FINRA staff retains full discretion to limit or withdraw its grant of the additional MPID(s) to such Trade Reporting Facility Participant. FINRA believes that Rule 5140 and IM–5140 are necessary to consolidate the process of issuing, and tracking the use of, multiple MPIDs used to report trades to TRFs.

The Commission approved NASD Rule 5140 on a pilot basis on November 6, 2006.[8] By its terms, the pilot period expired on January 26, 2007. On January 31, 2007, the Commission approved a one-year extension of the pilot period until January 25, 2008.[9] FINRA believes that an additional one-year extension until January 30, 2009, will provide additional time to analyze the use of multiple MPIDs on the TRFs. FINRA is not proposing any other changes to the pilot as this time.

FINRA is proposing to implement the proposed rule change on January 25, 2008.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[10] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 54307 (August 11, 2006), 71 FR 47551 (August 17, 2006).

[6] The expiration of the pilot period coincided with the expiration of the ADF pilot period. *See* Securities Exchange Act Release No. 53699 (April 21, 2006), 71 FR 25271 (April 28, 2006). On January 26, 2007, the Commission approved a proposed rule change to make the ADF rules permanent. *See* Securities Exchange Act Release No. 55181 (January 26, 2007), 72 FR 5093 (February 2, 2007).

[7] *See* Securities Exchange Act Release No. 55206 (January 31, 2007), 72 FR 5479 (February 6, 2007).

[8] *See* Securities Exchange Act Release No. 54715 (November 6, 2006), 71 FR 66354 (November 14, 2006); *see also* Securities Exchange Act Release No. 54715A (November 14, 2006), 71 FR 67183 (November 20, 2006) (correcting original approval order).

[9] *See* Securities Exchange Act Release No. 55206 (January 31, 2007), 72 FR 5479 (February 6, 2007).

[10] 15 U.S.C. 78o–3(b)(6).

practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change is consistent with these requirements because it will provide a process by which ECNs (in the case of the ADF) and Trade Reporting Facility Participants (in the case of TRFs) can request, and FINRA can properly allocate, the use of additional MPIDs for displaying quotes and orders through the ADF or reporting trades to a TRF.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

FINRA has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) thereunder.[12]

FINRA has requested that the Commission waive the 30-day operative delay, which would make the rule change operative immediately upon filing with the Commission. The Commission believes waiving the 30-day operative date is consistent with the protection of investors and the public interest because the proposed rule change extends without interruption the benefits of a pilot program that the Commission approved and previously extended.[13] Furthermore, the Commission agrees that extending the pilot for another year will provide additional time for FINRA to analyze the use of multiple MPIDs on the ADR. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[15]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml*; or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2008–003 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–FINRA–2008–003. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *http://www.sec.gov/rules/sro.shtml*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2008–003 and should be submitted on or before February 22, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Nancy M. Morris,

Secretary.

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[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19–4(f)(6). In addition, Rule 19–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. FINRA has satisfied this requirement.

[13] *See supra* notes 5 through 9.

[14] For purposes only of waiving the 30-day pre-operative period, the Commission has considered the impact of the proposed rule change on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 6086]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: The Rhythm Road-American Music Abroad

Announcement Type: New Cooperative Agreement.

Funding Opportunity Number: ECA/PE/C–CU–08–29.

Catalog of Federal Domestic Assistance Number: 00.000.

Key Dates:

Application Deadline: March 20, 2008.

Executive Summary: The Cultural Programs Division in the Office of Citizen Exchanges in the Bureau of Educational and Cultural Affairs (ECA) announces an open competition for a cooperative agreement to administer The Rhythm Road-American Music Abroad program. The program will consist of up to ten tours for a selected number of professional American artists in jazz, urban music, and American roots music (e.g. country-western, bluegrass, zydeco, Cajun, etc.) The musicians selected for this program must demonstrate high artistic ability and be conversant with the broader aspects of contemporary American society and culture. Tours will include workshops, master classes, and outreach activities, in addition to concerts.

U.S. public and non-profit organizations meeting the provisions described in Internal Revenue code section 26 U.S.C. 501(c)(3) may submit proposals that support the goals of The Rhythm Road-American Music Abroad program: to promote mutual understanding and cross-cultural awareness. The tours accomplish this by providing an opportunity for international audiences to experience American musical life, highlighting our country's cultural history as well as the contemporary cultural scene, and allowing American performers to learn about life and culture in the foreign host countries.

The Bureau is particularly interested in proposals for the administration of tours by jazz, urban, and American root music performers to countries with significant Muslim or underserved populations, and countries that engage youth and/or groups that influence youth. In the Western Hemisphere, we are also interested in proposals for projects that reach indigenous populations. No guarantee is made or implied that a grant will be awarded for tours to any particular region or that tours will be organized to any particular region.

For this competition, all organizations must demonstrate a minimum of five years' experience successfully conducting international performing arts exchange programs in the music field to be eligible.

I. Funding Opportunity Description

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Purpose: The Bureau seeks proposals to engage audiences overseas that do not normally have regular access to American cultural performances by presenting up to ten tours of Rhythm Road quartets. Musicians must be U.S. citizens who are at least 21 years old; demonstrate the highest artistic and musical ability; be conversant with broader aspects of contemporary American society and culture; and be adaptable to unescorted, rigorous touring through regions where travel and performance situations may be difficult. In addition to performances, Rhythm Road musicians will be expected to conduct or participate in master classes, lectures, workshops, impromptu musical sessions, radio and TV appearances, and other activities with local cultural institutions, musicians, media and students. A Washington, DC public performance by each ensemble in connection with the overseas tour should be included in the proposal.

Guidelines: The successful applicant will organize the selection of up to ten quartets, as well as administer the international tour program during this period.

Proposals should reflect a practical understanding of global issues, and demonstrate sensitivity to cultural, political, economic and social differences in regions where tour groups may perform. Special attention should be given to describing the applicant organization's experience with planning and implementing complex and unpredictable logistical scenarios overseas. Applicants should outline their project team's capacity for doing projects of this nature and provide a detailed sample program (to include itineraries) to illustrate planning capacity and ability to achieve program objectives. Applicants must identify all U.S. and foreign partner organizations and/or venues with whom they are proposing to collaborate, and describe previous cooperative projects in the section on ''Institutional Capacity.'' For this competition, applicants must include in their proposal supporting materials or documentation that demonstrates a minimum of five years experience in conducting global exchanges in the music field. Proposals must include references with name and contact information for other assistance awards the applicant has received, in the event the Bureau chooses to be in touch directly.

ECA intends to give one assistance award to a qualified institution or organization to administer The Rhythm Road: American Music Abroad program globally. Activities funded through this cooperative agreement support the organization and implementation of up to ten (10) international tours, and must include, but are not limited to:

- Selection of artists;
- Advance tour planning;
- Programming educational, media and other outreach activities in consultation with U.S. embassies;
- Scheduling public performance dates in Washington, DC, for each ensemble;
- Assisting musicians with passport, visa, immunizations, and other pre-tour preparations;
- Arranging and providing orientation sessions and pre-travel briefings, producing press materials and providing support for publicity while the artists are overseas;
- Evaluating program activities;
- Reporting on tour activities to ECA;
- Assisting ensembles and embassies with follow-on program development.

Applicants must have experience in global exchange planning and implementation, and should address the above elements in the proposal. The grantee must be highly responsive and able to work in close consultation with the Public Affairs Sections of the participating U.S. embassies.

A pre-tour briefing session for each ensemble should be held with State Department regional experts and ECA program officers in attendance. This event should be scheduled in coordination with the Washington, DC public performance.

Successful applicants will include with their proposal specific criteria for the selection of American artists in jazz, urban, and American root music styles.

The Cultural Programs Division's activities and responsibilities for this program are as follows:

- Participation in the selection of musicians.
- Determination of the priority countries to which the tours will travel. Priority countries will be those in all world regions of greatest importance to the Department of State's public diplomacy mission to build mutual understanding.
- Arrangement of participation by Department of State officers in pre-tour briefings and any debriefings that might take place.
- Approval of all tour arrangements.

II. Award Information

Type of Award: Cooperative Agreement. ECA's level of involvement in this program is listed under number I above.

Fiscal Year Funds: FY–2008.

Approximate Total Funding: $1,000,000.

Approximate Number of Awards: 1.

Approximate Average Award: $1,000,000.

Ceiling of Award Range: $1,000,000.

Anticipated Award Date: June 12, 2008.

Anticipated Project Completion Date: June 30, 2009.

Additional Information: Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is ECA's intent to renew this cooperative agreement for two additional fiscal years before openly competing it again.

III. Eligibility Information

III.1. *Eligible applicants:* Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. *Cost Sharing or Matching Funds:* There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. *Other Eligibility Requirements:*

(a.) Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates giving one award, in an amount not to exceed $1,000,000 to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

(b.) Technical Eligibility: All proposals must comply with the following: (1) Full adherence to the guidelines stated herein and in the Solicitation Package; (2) proposal submission deadline date; (3) non-profit organization status, and; (4) for purposes of this competition, at least five years of demonstrated experience in programming globally in the music field, or your proposal will be declared technically ineligible and given no further consideration in the review process. Eligible applicants may submit only ONE proposal (TOTAL) in response to this RFGP. If multiple proposals are received, all submissions will be declared technically ineligible and will be given no further consideration in the review process.

IV. Application and Submission Information

Note: Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1 *Contact Information To Request an Application Package:* Please contact the Cultural Programs Division (ECA/PE/C/CU) in the Office of Citizen Exchanges, Room 568, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, 202/203–7488; fax 202/203–7525; e-mail *ProctorLM@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/PE/C–CU–08–29 located at the top of this announcement when making your request.

Alternatively, an electronic application package may be obtained from grants.gov. Please see section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instructions (PSI) document which consists of required application forms, and standard guidelines for proposal preparation.

Please specify Jill Staggs and refer to the Funding Opportunity Number ECA/PE/C–CU–08–29 located at the top of this announcement on all other inquiries and correspondence.

IV.2. *To Download a Solicitation Package Via the Internet:* The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/rfgps/menu.htm*, or from the Grants.gov Web site at *http://www.grants.gov*.

Please read all information before downloading.

IV.3. *Content and Form of Submission:* Applicants must follow all instructions in the Solicitation Package. The original and 14 copies (15 proposals total) of the application should be sent per the instructions under IV.3f. ''Application Deadline and Methods of Submission'' section below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory PSI document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d.1 *Adherence to All Regulations Governing the J Visa:* The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official program sponsor of the exchange program covered by this RFGP, and an employee of the Bureau will be the ''Responsible Officer'' for the program under the terms of 22 CFR part 62, which covers the administration of the Exchange Visitor Program (J visa program). Under the terms of 22 CFR part 62, organizations receiving grants under this RFGP will be third parties ''cooperating with or assisting the sponsor in the conduct of the sponsor's program.'' The actions of grantee program organizations shall be ''imputed to the sponsor in evaluating the sponsor's compliance with'' 22 CFR part 62. Therefore, the Bureau expects that any organization receiving a grant under this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR part 62 et seq.

The Bureau of Educational and Cultural Affairs places critically important emphases on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence

by grantee program organizations and program participants to all regulations governing the J visa program status. Therefore, proposals should *explicitly state in writing* that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR part 62. If your organization has experience as a designated Exchange Visitor Program Sponsor, the applicant should discuss their record of compliance with 22 CFR part 62 et. seq., including the oversight of their Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The Office of Citizen Exchanges of ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 203–5029, Fax: (202) 453–8640.

IV.3d.2 *Diversity, Freedom and Democracy Guidelines:* Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106—113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. *Program Monitoring and Evaluation:* Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the grantee will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes. Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes,* in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. Participant satisfaction with the program and exchange experience.

2. Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. Participant behavior, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. Institutional changes, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (i.e., surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit a comprehensive budget for the entire program. The award may not exceed $1,000,000. There must be a summary budget, as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

IV.3e.2. For budgeting purposes, applicants should estimate costs based on eight to ten quartets traveling for approximately four (4) weeks to six (6) destinations with significant Muslim and indigenous populations in the following regions: Africa, East Asia, Eurasia, Central Europe and the Balkans, the Near East/North Africa,

Latin America, and South Asia. Final determination of participating regions and countries will be made by ECA in collaboration with U.S. embassies and the successful applicant after the assistance award has been given.

IV.3e.3. *Allowable costs for the program include the following:* (1) Program Expenses, including but not limited to: Domestic and international travel for the selected ensembles (per The Fly America Act); visas and immunizations; airport taxes and country entrance fees; honoraria; educational materials and presentation items; excess and overweight baggage fees; trip itinerary booklets; press kits and promotional materials; follow-on activities; monitoring and evaluation; and international travel for program implementation and/or evaluation purposes.

The following guidelines may be helpful in developing a proposed budget:

A. Travel Costs. International and domestic airfares. (per The Fly America Act), transit costs, ground transportation, and visas for The Rhythm Road: American Music Abroad participants to travel to the tour destinations.

B. Per Diem: For the Washington, DC, portion of the tour, organizations should use the published Federal per diem rates, and estimate per diems based on a two-night stay per ensemble member. The Public Affairs Sections of the participating U.S. embassies and consulates are responsible for per diem abroad. Domestic per diem rates may be accessed at: *http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentId=17943&contentType=GSA_BASIC.*

C. Sub-grantees and Consultants. Sub-grantee organizations may be used, in which case the written agreement between the prospective grantee and sub-grantee should be included in the proposal. Sub-grants must be itemized in the budget under General Program Expenses. Consultants may be used to provide specialized expertise. Daily honoraria cannot exceed $250 per day, and applicants are strongly encouraged to use organizational resources, and to cost share heavily in this area.

D. Health Insurance. Each Rhythm Road participant will be covered under the terms of the ECA-sponsored COINS health insurance policy. The cost for international travel insurance for staff travel may be included in the proposal budget.

E. Honoraria for Rhythm Road musicians. Daily honorarium is $200 per day for each performer, including rest and travel days.

F. Educational and Promotional Items. Ensemble members may use these funds for individual purchases or they may pool funds for joint purposes. ECA funds for educational and promotional items (e.g. CDS, guitar strings, label pins, etc.) should not exceed $500 per ensemble.

G. Excess Baggage. Excess baggage costs are based on the size and weight of the instrument. Excess baggage estimates may be subject to change once actual tour itineraries are scheduled; however for proposal budget purposes, costs should be estimated at $3,500 per ensemble.

H. Immunizations/Visas. For purposes of a proposed budget, line items for immunizations should be estimated at $400 per musician, and visas/visa photos should be estimated at $600 per musician.

I. Press Kits. Each relevant U.S. embassy should receive appropriate contents for press kits. Items may be sent electronically with the understanding that in some cases, embassies may not be able to access large files or attachments. This line item may include funds for shooting and duplicating B&W publicity photos and duplicating CDS.

J. Staff Travel. Allowable costs include domestic staff travel for one staff member to attend recruitment/selection events in approximately two U.S. cities and to pre-tour briefings and performances in Washington, D.C. International staff travel will be allowable, especially if associated with monitoring and evaluation, as long as costs for a full four-week tour for each ensemble are completely covered. Cost-sharing for staff travel is strongly encouraged.

2. Administrative Costs. Costs necessary for the effective administration of the program may include salaries for grantee organization employees, benefits, and other direct and indirect costs per detailed instructions in the Solicitation Package. While there is no rigid ratio of administrative to program costs, proposals in which the administrative costs do not exceed 25% of the total requested from ECA grant funds will be more competitive on cost effectiveness. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Application Deadline and Methods of Submission:

Application Deadline Date: Thursday, March 20, 2008.

Reference Number: ECA/PE/C/CU–08–29.

Methods of Submission:

Applications may be submitted in one of two ways: (1) In hard-copy, via a nationally recognized overnight delivery service (i.e., DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or (2) electronically through *http://www.grants.gov.*

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory PSI of the solicitation document.

IV.3f.1 *Submitting Printed Applications:* Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will *not* notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

The original and 14 copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C–CU–08–29, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants submitting hard-copy applications must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal in text (.txt) or Microsoft Word format on a PC-formatted disk. The Bureau will provide these files electronically to the appropriate Public Affairs Section(s) at the U.S. embassies for their review.

IV.3f.2—*Submitting Electronic Applications:* Applicants have the option of submitting proposals

electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the ''Find'' portion of the system. Please follow the instructions available in the ''Get Started'' portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov. Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.

Direct all questions regarding Grants.gov registration and submission to: Grants.gov Customer Support.

Contact Center Phone: 800–518–4726.

Business Hours: Monday–Friday, 7 a.m.–9 p.m. Eastern Time.

E-mail: support@grants.gov.

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.

Applicants will receive a confirmation e-mail from grants.gov upon the successful submission of an application. ECA will *not* notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov Web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3g. *Intergovernmental Review of Applications:* Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. Review Process: The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for cooperative agreements resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Program Planning and Ability to Achieve Objectives:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

2. *Multiplier Effect/Impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

3. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

4. *Institutional Capacity:* Proposals should include (1) the institution's mission and date of establishment; (2) an outline of prior awards—U.S. government and/or private support received for tours abroad; (3) descriptions of experienced staff members who will be part of the team implementing the program, and; (4) all other documentation requested herein. Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals. The proposal should reflect the institution's expertise in the music management arena and knowledge of the conditions in the regions abroad.

5. *Institution's Record/Ability:* Proposals should demonstrate an institutional record of at least five years of international music management planning and implementation, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grants Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

6. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended.

7. *Cost-effectiveness and Cost-sharing:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

VI. Award Administration Information

VI.1a. *Award Notices:* Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2 *Administrative and National Policy Requirements:*

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments''.

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with

Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following Web sites for additional information:

http://www.whitehouse.gov/omb/grants.

http://exchanges.state.gov/education/grantsdiv/terms.htm#articleI.

VI.3. *Reporting Requirements:* You must provide ECA with a hard copy original plus two copies of the following reports:

(1) A final program and financial report no more than 90 days after the expiration of the award;

(2) Quarterly program and financial reports showing activities carried out and expenses incurred in the calendar quarter.

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VII. Agency Contacts

For questions about this announcement, contact: Jill Staggs, Cultural Programs, ECA/PE/C/CU, Room 568, ECA/PE/C–CU–08–29, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, 202/203–7493; fax 202/203–7525; *StaggsJJ@state.gov.*

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/PE/C–CU–08–29.

Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice: The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: January 23, 2008.

C. Miller Crouch,

Acting Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. E8–1749 Filed 1–31–08; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in Indiana

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA and United States Fish and Wildlife Service (USFWS), DOI.

SUMMARY: This notice announces actions taken by the FHWA and the USFWS that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed highway project for a 13.1 mile segment of I–69, in the Counties of Warrick and Gibson, State of Indiana and grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA is advising the public that the FHWA and the USFWS have made decisions that are subject to 23 U.S.C. 139(l)(1) and are final within the meaning of that law. A claim seeking judicial review of those Federal agency decisions on the proposed highway project will be barred unless the claim is filed on or before July 30, 2008. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then the shorter time period applies.

FOR FURTHER INFORMATION CONTACT: For the FHWA: Mr. Anthony DeSimone, P.E., Federal Highway Administration, Indiana Division, 575 North Pennsylvania Street, Room 254, Indianapolis, IN 46204–1576; telephone: (317) 226–5307; e-mail: *Anthony.DeSimone@dot.gov.* The FHWA Indiana Division Office's normal business hours are 7:30 a.m. to 4 p.m., e.t. For the USFWS: Mr. Scott Pruitt, Field Supervisor, Bloomington Field Office, USFWS, 620 South Walker Street, Bloomington, IN 47403–2121; telephone: 812–334–4261; e-mail: *Scott_Pruitt@fws.gov.* Normal business hours for the USFWS Bloomington Field Office are: 8 a.m. to 4:30 p.m., e.t. You may also contact Mr. Thomas Seeman, Project Manager, Indiana Department of Transportation (INDOT), 100 North Senate Avenue, Indianapolis, IN 46204; telephone: (317) 232–5336; e-mail: *TSeeman@indot.IN.gov.* Normal business hours for the Indiana Department of Transportation are: 8 a.m. to 4:30 p.m., e.t.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA has approved a Tier 2 Final Environmental Impact Statement (FEIS) for section 1 of the I–69 highway project from Evansville to Indianapolis and issued a Record of Decision (ROD) for section 1 on December 12, 2007. Section 1 of the I–69 project extends from the I–64/I–164/SR 57 interchange north of Evansville to approximately one-half mile north of SR 64 near Oakland City, Indiana. Section 1 is a new alignment, fully access-controlled highway that has an approximately 350-foot-wide right-of-way. The ROD selected Alternative 4 for section 1, as described in the *I–69 Evansville to Indianapolis, Indiana, Tier 2 Final Environmental Impact Statement, Evansville to Oakland City* (FEIS). The ROD also approved the locations of the interchanges, grade separations, and access roads (which include new roads, road relocations, and realignments).

The FHWA had previously issued a Tier 1 FEIS and ROD for the entire I–69 project from Evansville to Indianapolis, Indiana. A Notice of Limitation on Claims for Judicial Review of Actions by FHWA and United States Fish and Wildlife Service (USFWS), DOI, was published in the **Federal Register** on April 17, 2007. A claim seeking judicial review of the Tier 1 decisions must have been filed by October 15, 2007, to avoid being barred under 23 U.S.C. 139(l). Decisions in the FHWA Tier 1 ROD that were cited in that **Federal Register** notice included, but were not limited to, the following:

1. Purpose and need for the project.
2. Range of alternatives for analysis.
3. Selection of the Interstate highway build alternative and highway corridor for the project, as Alternative 3C,
4. Elimination of other alternatives from consideration in Tier 2 NEPA proceedings.
5. Process for completing the Tier 2 alternatives analysis and studies for the

project, including the designation of six Tier 2 sections and a decision to prepare a separate environmental impact statement for each Tier 2 section.

The Tier 1 ROD and Notice specifically noted that the ultimate alignment of the highway within the corridor, and the location and number of interchanges and rest areas would be evaluated in the Tier 2 NEPA proceedings. Those proceedings for section 1 of the I–69 project from Evansville to Indianapolis have culminated in the December 12, 2007, ROD and this Notice. Interested parties may consult the Tier 2, section 1 ROD and FEIS for details about each of the decisions described above and for information on other issues decided. The Tier 2, section 1 ROD can be viewed and downloaded from the project Web site at *http://www.i69indyevn.org/PDF/Section1/Section1_ROD.pdf*. People unable to access the Web site may contact FHWA or INDOT at the addresses listed above. Decisions in the Section 1, Tier 2 ROD that have final approval include, but are not limited to, the following:

1. National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351].
2. Endangered Species Act [16 U.S.C. 1531–1544].
3. Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128].
4. Clean Air Act, 42 U.S.C. 7401–7671(q).
5. Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303].
6. Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*].

Previous actions taken by the USFWS for the Tier 1, I–69 project, pursuant to the Endangered Species Act, 16 U.S.C. 1531–1544, included its concurrence with the FHWA's determination that the I–69 project was not likely to adversely affect the eastern fanshell mussel (*Cyprogenia stegaria*) and that the project was likely to adversely affect, but not jeopardize, the bald eagle. The USFWS also concluded that the project was not likely to jeopardize the continued existence of the Indiana bat and was not likely to adversely modify the bat's designated Critical Habitat. These USFWS decisions were described in the Programmatic Biological Opinion issued on December 3, 2003, the Revised Programmatic Biological Opinion issued on August 24, 2006, and other documents in the Tier 1 project records. A Notice of Limitation on Claims for Judicial Review of these actions and decisions by the USFWS, DOI, was published in the **Federal Register** on April 17, 2007. For the Tier 2, section 1, 13.1 mile I–69 project in Gibson and Warrick Counties, an individual Biological Opinion was issued on August 29, 2007, that concluded that the Section 1 project was not likely to jeopardize the continued existence of the Indiana bat and was not likely to adversely modify the bat's designated Critical Habitat. In addition, the UFWS issued an Incidental Take Statement subject to specified terms and conditions. These opinions, and other project records relating to the USFWS actions, taken pursuant to the Endangered Species Act, 16 U.S.C. 1531–1544, are available by contacting the FHWA, INDOT, or USFWS at the addresses provided above. The Tier 2, section 1, Biological Opinion can be viewed and downloaded from the project Web site at *http://www.deis.i69indyevn.org/FEIS_Sec1/Appendix_Q2.pdf.*

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(*l*)(1)

Robert F. Tally Jr.,

Division Administrator, Indianapolis, Indiana.

[FR Doc. E8–1811 Filed 1–31–08; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Sunshine Act Meeting; Unified Carrier Registration Plan Board of Directors

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

TIME AND DATE: February 21, 2008, 11 a.m. to 2 p.m., Eastern Daylight Time.

PLACE: This meeting will take place telephonically. Any interested person may call Mr. Avelino Gutierrez at (505) 827–4565 to receive the toll free numbers and pass codes needed to participate in these meetings by telephone.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Board of Directors (the Board) will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement and to that end, may consider matters properly before the Board.

FOR FURTHER INFORMATION CONTACT: Mr. Avelino Gutierrez, Chair, Unified Carrier Registration Board of Directors at (505) 827–4565.

Dated: January 28, 2008.

William A. Quade,

Associate Administrator for Enforcement and Program Delivery.

[FR Doc. 08–473 Filed 1–30–08; 9:39am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket ID. FMCSA–2007–0071]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 31 individuals for exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the Federal vision standard.

DATES: Comments must be received on or before March 3, 2008.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2007–0071 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket ID for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov*, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://*

www.regulations.gov at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78; Apr. 11, 2000). This information is also available at *http://Docketinfo.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' FMCSA can renew exemptions at the end of each 2-year period. The 31 individuals listed in this notice each have requested an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

Qualifications of Applicants

Dennis R. Baillargeon

Mr. Baillargeon, age 69, has a prosthetic left eye due to an injury sustained 40 years ago. The best corrected visual acuity in his right eye is 20/25. Following an examination in 2007, his optometrist noted, ''Dennis R. Baillargeon has sufficient vision to perform the driving tasks required to operate a commercial vehicle, from the above testing.'' Mr. Baillargeon reported that he has driven straight trucks for 25 years, accumulating 300,000 miles. He holds a Class A CDL from Wisconsin. His driving record for the last 3 years shows no crashes and one conviction for a moving violation, speeding in a CMV. He exceeded the speed limit by 10 mph.

Alberto Blanco

Mr. Blanco, 52, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/400. Following an examination in 2007, his ophthalmologist noted, ''Patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Blanco reported that he has driven straight trucks for 7 years, accumulating 210,000 miles, tractor-trailer combinations for 8 years, accumulating 336,000 miles, and buses for 1 year, accumulating 25,000 miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes and one conviction for a moving violation, speeding in a CMV. He exceeded the speed limit by 9 mph.

Michael B. Canedy

Mr. Canedy, 41, has posterior uveitis in his right eye. The visual acuity in his right eye is 20/800 and in the left, 20/15. Following an examination in 2007, his ophthalmologist noted, ''In my opinion, Mr. Michael Canedy is certainly safe and qualified to perform the driving tasks required to operate a commercial vehicle.'' Mr. Canedy reported that he has driven straight trucks for 8 years, accumulating 320,000 miles. He holds a Class B CDL from Minnesota.

His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

John Cencora

Mr. Cencora, 43, has had optic nerve atrophy in his left eye due to a traumatic injury sustained as a child. The best corrected visual acuity in his right eye is 20/25 and in the left, 20/400. Following an examination in 2007, his optometrist noted, ''In my medical opinion, he has sufficient vision to operate a commercial vehicle.'' Mr. Cencora reported that he has driven tractor-trailer combinations for 5 years, accumulating 130,000 miles. He holds a Class A CDL from California. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Larry A. Cossin

Mr. Cossin, 58, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/64 and in the left, 20/30. Following an examination in 2007, his optometrist noted, ''From these results, I believe Mr. Cossin does have sufficient visual acuity, visual field, and color discrimination continue to safely operate a commercial vehicle.'' Mr. Cossin reported that he has driven straight trucks for 11 years, accumulating 205,700 miles. He holds a Class D operator's license from Ohio. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Charles W. Cox

Mr. Cox, 49, has complete loss of vision in his right eye due to complete opacification of the cornea and lens at birth. The best corrected visual acuity in his left eye is 20/15. Following an examination in 2007, his optometrist noted, ''Mr. Cox has sufficient vision to perform the driving tasks required to operate a commercial vehicle and he has many years experience in doing so.'' Mr. Cox reported that he has driven straight trucks for 5 years, accumulating 2,000 miles, tractor-trailer combinations for 3 years, accumulating 3,000 miles, and buses for 12 years, accumulating 48,000 miles. He holds a Class A CDL from Arizona. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Gary W. Ellis

Mr. Ellis, 45, has had anisometropia and amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/400. Following an examination in 2007, his optometrist noted, ''Given his past performance which you would have in your records, it is my opinion that Mr. Ellis has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Ellis reported that he has tractor-trailer combinations for 23 years, accumulating 1.9 million miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Dennis J. Evers

Mr. Evers, 54, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/400 and in the left, 20/20. Following an examination in 2007, his optometrist noted, ''Mr. Evers has

sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Evers reported that he has driven straight trucks for 14 years, accumulating 56,000 miles. He holds a Class D operator's license from Oklahoma. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Hector O. Flores

Mr. Flores, 27, has had amblyopia in his left eye since birth. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/80. Following an examination in 2007, his ophthalmologist noted, ''I certify that Hector Flores has sufficient vision to perform driving tasks required to operate a commercial vehicle.'' Mr. Flores reported that he has driven tractor-trailer combinations for 4 years, accumulating 240,000 miles. He holds a Class A CDL from Maryland. His driving record for the last 3 years shows one crash that resulted in one conviction for a moving violation in a CMV, failure to make a left turn from the proper lane.

Roger W. Goold

Mr. Goold, 66, has had complete loss of vision in his left eye due to a traumatic injury sustained at age 19. The visual acuity in his right eye is 20/20. Following an examination in 2007, his optometrist noted, ''In my opinion, Roger Goold has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Goold reported that he has driven straight trucks for 45 years, accumulating 67,500 miles. He holds a Class A CDL from Arizona. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

K. Lee Guse

Mr. Guse, 64, has a retinal scar in his left eye which was sustained at birth. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/400. Following an examination in 2007, his optometrist noted, ''This defect should not affect his ability to operate a commercial vehicle.'' Mr. Guse reported that he has driven straight trucks 16 years, accumulating 160,000 miles. He holds a Class B CDL from Ohio. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Steven W. Halsey

Mr. Halsey, 40, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/400. Following an examination in 2007, his optometrist noted, ''In my medical opinion, Mr. Halsey has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Halsey reported that he has driven straight trucks for 11 years, accumulating 165,000 miles. He holds a Class B CDL from Missouri. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

John D. Hamm

Mr. Hamm, 52, has had amblyopia in his left eye since birth. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/100. Following an examination in 2007, his optometrist noted, ''In my professional opinion, Mr. Hamm has adequate vision to operate a commercial vehicle.'' Mr. Hamm reported that he has driven straight trucks for 36 years, accumulating 1.7 million miles, tractor-trailer combinations for 18 years, accumulating 360,000 miles, and buses for 11 years, accumulating 242,000 miles. He holds a Class B CDL from Alabama. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Clifford J. Harris

Mr. Harris, 50, has had amblyopia in his right eye since birth. The best corrected visual acuity in his right eye is count-finger vision and in the left, 20/15. Following an examination in 2007, his ophthalmologist noted, ''I certify that Mr. Harris has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Harris reported that he has driven tractor-trailer combinations for 8 years, accumulating 624,000 miles. He holds a Class A CDL from California. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

John C. Henricks

Mr. Henricks, 36, has had amblyopia in his right eye since birth. The best corrected visual acuity in his right eye is 20/200 and in the left, 20/20. Following an examination in 2007, his optometrist noted, ''It is my medical opinion that Mr. John Henricks has sufficient vision to perform driving tasks required to operate a commercial vehicle.'' Mr. Henricks reported that he has driven straight trucks for 11 years, accumulating 93,500 miles, and tractor-trailer combinations for 10 years, accumulating 85,000 miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Michael A. Hilderbrand

Mr. Hilderbrand, 28, has had posterior staphyloma in his right eye since 1990. The best corrected visual acuity in his right eye is count-finger vision and in the left, 20/20. Following an examination in 2007, his optometrist noted, ''In my medical opinion. Michael Hilderbrand has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Hilderbrand reported that he has driven straight trucks for 3 years, accumulating 78,000 miles. He holds a Class C operator's license from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Richard L. Larson

Mr. Larson, 63, has had a retinal detachment in his right eye due to a traumatic injury sustained in 1968. The best corrected visual acuity in his right eye is count-finger vision and in the left, 20/15. Following an examination in 2007, his optometrist noted, ''It is my medical opinion that Mr. Larson has sufficient vision both centrally and peripherally to safely operate a commercial vehicle based on his visual performance at the time of his exam with me and the years of safe commercial experience he has stated he has.'' Mr. Larson reported that he has driven straight trucks for 45 years, accumulating 112,500 miles, and tractor-trailer combinations for 35 years, accumulating 1.1 million miles. He holds a Class A CDL from Montana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Thomas M. Leadbitter

Mr. Leadbitter, 51, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/200. Following an examination in 2007, his optometrist noted, ''Ok to drive with correction and has sufficient vision to perform driving tasks to operate a commercial vehicle.'' Mr. Leadbitter reported that he has driven straight trucks for 35 years, accumulating 1.4 million miles. He holds a Class A CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and one conviction for a moving violation in a CMV, failure to obey a traffic signal.

John L. Lewis

Mr. Lewis, 75, has a prosthetic left eye due to an injury sustained as a child. The best corrected visual acuity in his

right eye is 20/20. Following an examination in 2007, his optometrist noted, ''It is my medical opinion that Mr. John Lewis has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Lewis reported that he has driven straight trucks for 56 years, accumulating 2.4 million miles, tractor-trailer combinations for 48 years, accumulating 480,000 miles, and buses for 9 years, accumulating 4,500 miles. He holds a Class A CDL from Oklahoma. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Jonathan P. Lovel

Mr. Lovel, 38, has macular damage in his right eye due to a traumatic injury sustained 16 years ago. The best corrected visual acuity in his right eye is 20/200 and in the left, 20/20. Following an examination in 2007, his optometrist noted, ''In my medical opinion, this gentleman has sufficient vision to perform driving tasks required to operate a commercial vehicle.'' Mr. Lovel reported that he has driven straight trucks for 16 years, accumulating 480,000 miles. He holds a Class D operator's license from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Douglas A. Mendoza

Mr. Mendoza, 35, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/200 and in the left, 20/20. Following an examination in 2007, his optometrist noted, ''In my medical opinion, Mr. Mendoza has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Mendoza reported that he has driven straight trucks for 5 years, accumulating 175,000 miles. He holds a Class C operator's license from Maryland. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Antonio Ribeiro

Mr. Ribeiro, 47, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/80 and in the left, 20/20. Following an examination in 2007, his ophthalmologist noted, ''In my medical opinion, I certify that Mr. Ribeiro has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Ribeiro reported that he has driven straight trucks for 15 years, accumulating 75,000 miles. He holds a Class B CDL from New York. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Enrique G. Salinas, Jr.

Mr. Salinas, 65, has had central retinal vein occlusion in his left eye since 2003. The best corrected visual acuity in his right eye is 20/25 and in the left, hand-motion vision. Following an examination in 2007, his ophthalmologist noted, ''In my medical opinion, Mr. Salinas has sufficient vision to perform driving tasks necessary to operate a commercial vehicle.'' Mr. Salinas reported that he has driven straight trucks for 4 years, accumulating 200,000 miles, and tractor-trailer combinations for 35 years, accumulating 3.2 million miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Anthony T. Smith.

Mr. Smith, 42, has a prosthetic left eye due to a traumatic injury sustained as a child. The visual acuity in his right eye is 20/20. Following an examination in 2007, his optometrist noted, ''In my opinion, his vision is stable and he is able to drive a commercial vehicle.'' Mr. Smith reported that he has driven straight trucks for 19 years, accumulating 1.1 million miles, and tractor-trailer combinations for 5 years, accumulating 405,000 miles. He holds a Class A CDL from Michigan. His driving record for the last 3 years shows no crashes and one conviction for a moving violation in a CMV. He exceeded the speed limit by 5 mph.

David N. Stubbs

Mr. Stubbs, 57, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/400. Following an examination in 2007, his ophthalmologist noted, ''In my medical opinion, he does have sufficient vision to perform driving test required to operate a bob truck, which is a commercial vehicle and which is what he drives at this time. Mr. Stubbs does not see well in his left eye, but he has been that way all his life and he has developed sufficient depth perception to operate a commercial vehicle.'' Mr. Stubbs reported that he has driven straight trucks for 14 years, accumulating 158,200 miles. He holds a Class D operator's license from Mississippi. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

J.D. Taylor

Mr. Taylor, 69, has macular degeneration in his right eye. The best corrected visual acuity in his right eye is 20/200 and in the left, 20/30. Following an examination in 2007, his optometrist noted, ''In my medical opinion, Mr. Taylor has sufficient vision to perform the task of a commercial vehicle operator.'' Mr. Taylor reported that he has driven straight trucks for 32 years, accumulating 1.3 million miles. He holds a Class B CDL from Texas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Charles W. Towner, Jr.

Mr. Towner, 44, has complete loss of vision in his left eye due to a traumatic injury sustained 4 years ago. The best corrected visual acuity in his right eye is 20/20. Following an examination in 2007, his optometrist noted, ''With vision correctable to 20/20 in the right eye. It is my medical opinion that Mr. Charles Towner has sufficient vision to operate a commercial vehicle.'' Mr. Towner reported that he has driven straight trucks for 3½ years, accumulating 227,500 miles. He holds a Class D operator's license from Florida. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

James D. Tucker

Mr. Tucker, 50, has loss of vision in his left eye due to a traumatic injury sustained 4 years ago. The best corrected visual acuity in his right eye is 20/15 and in the left, light perception. Following an examination in 2007, his ophthalmologist noted, ''In my opinion, this patient has the vision required to drive a commercial vehicle.'' Mr. Tucker reported that he has driven tractor-trailer combinations for 24 years, accumulating 1.8 million miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

John J. Wagner

Mr. Wagner, 51, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/400. Following an examination in 2007, his ophthalmologist noted, ''In my medical opinion, John Wagner has significant vision required to perform the driving tasks required to operate a commercial vehicle.'' Mr. Wagner reported that he has driven straight trucks for 32 years, accumulating 960,000 miles, and tractor-trailer combinations for 2 years, accumulating 60,000 miles. He holds a

Class A CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Kevin D. White

Mr. White, 35, has complete loss of vision in his left eye due to a traumatic injury sustained as a child. The visual acuity in his right eye is 20/20. Following an examination in 2007, his optometrist noted, ''it is my medical opinion that Mr. White does in fact meet the vision requirements to operate a commercial vehicle.'' Mr. White reported that he has driven straight trucks for 6 years, accumulating 900,000 miles, and tractor-trailer combinations for 6 years, accumulating 900,000 miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Richard W. Wylie

Mr. Wylie, 35, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/70 and in the left, 20/20. Following an examination in 2007, his optometrist noted, ''After evaluating Richard, I am very confident that his vision is sufficient to perform the driving tasks required to operate commercial vehicle.'' Mr. Wylie reported that he has driven straight trucks for 13½ years, accumulating 432,000 miles, and tractor-trailer combinations for 2½ years, accumulating 402,500 miles. He holds a Class A CDL from Connecticut. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. The Agency will consider all comments received before the close of business March 3, 2008. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice.

The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: January 28, 2008.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E8–1881 Filed 1–31–08; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–01–10578, FMCSA–05–21711, FMCSA–05–22194, FMCSA–05–22727]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 7 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective February 9, 2008. Comments must be received on or before March 3, 2008.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–01–10578, FMCSA–05–21711, FMCSA–05–22194, FMCSA–05–22727, using any of the following methods.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

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Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78; Apr. 11, 2000). This information is also available at *http://DocketInfo.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202)–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 7 individuals who have requested a renewal of their exemption in accordance with FMCSA procedures. FMCSA has evaluated these 7 applications for renewal on their merits and decided to extend each

exemption for a renewable two-year period. They are:

James S. Ayers
Curtis F. Caddy, III
Vernon J. Dohrn
Steven R. Felks
Douglas J. Mauton
Dennis L. Maxcy
Dean B. Ponte

These exemptions are extended subject to the following conditions: (1) That each individual have a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 7 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (66 FR 53826; 66 FR 66966; 68 FR 69434; 71 FR 6825; 70 FR 48797; 70 FR 61493; 70 FR 57353; 70 FR 72689; 70 FR 71884; 71 FR 4632). Each of these 7 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by March 3, 2008.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 7 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was based on the merits of each case and only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all of these drivers, are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: January 28, 2008.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E8–1882 Filed 1–31–08; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2007–29286]

Qualification of Drivers; Exemption Applications; Diabetes

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt twenty-nine individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions will enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions are effective February 1, 2008. The exemptions expire on February 1, 2010.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's complete Privacy Act Statement in the

Federal Register (65 FR 19477, Apr. 11, 2000). This statement is also available at *http://DocketInfo.dot.gov.*

Background

On December 7, 2007, FMCSA published a notice of receipt of Federal diabetes exemption applications from twenty-nine individuals, and requested comments from the public (72 FR 69280). The public comment period closed on January 7, 2008, and no comments were received.

FMCSA has evaluated the eligibility of the twenty-nine applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulation, 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current standard for diabetes in 1970 because several risk studies indicated that diabetic drivers had a higher rate of crash involvement than the general population. The diabetes rule provides that ''A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control'' (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled ''A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century.'' The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The 2003 notice in conjunction with the November 8, 2005 (70 FR 67777) **Federal Register** Notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These twenty-nine applicants have had ITDM over a range of 1 to 41 years. These applicants report no hypoglycemic reaction that resulted in loss of consciousness or seizure, that required the assistance of another person, or resulted in impaired cognitive function without warning symptoms in the past 5 years (with one year of stability following any such episode). In each case, an endocrinologist has verified that the driver has demonstrated willingness to properly monitor and manage their diabetes, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications.

The qualifications and medical condition of each applicant were stated and discussed in detail in the December 7, 2007, **Federal Register** Notice (72 FR 69280). Therefore, they will not be repeated in this notice.

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes standard in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologist's medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that exempting these applicants from the diabetes standard in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not they are related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

There were no comments to the docket, therefore, based upon its evaluation of the twenty-nine exemption applications, FMCSA exempts, Douglas D. Aure, Bruce E. Bivins, Steven G. Boggs, Jessie L. Brock, II, Francis C. Coryea, Challis J. Crismore, Colin M. Forer, Kevin D. Hewston, Daniel C. Horvat, Richard L. Jarvi, David J. Jansen, Lawrence A. Kibler, Richard H. Kruse, Dan A. McGee, Arthur J. Medrano, Florindo G. Mercado, Brian D. Morin, Mark R. Perkins, Amy L. Polovino, William H. Reinhart, Daniel J. Russell, Christopher C. Schuch, Timothy Short, Wayne Skiles, Gregory B. Valentine, Sr., James J. Walsh, Uve J. Witsch, Steven G. Woltman, and John T. Yocum from the ITDM standard in 49 CFR 391.41(b)(3), subject to the conditions listed under ''Conditions and Requirements'' above.

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption will be valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: January 28, 2008.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E8–1886 Filed 1–31–08; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket ID. FMCSA–2007–0070]

Qualification of Drivers; Exemption Applications; Diabetes

AGENCY: Federal Motor Carrier Safety Administration (FMCSA).

ACTION: Notice of applications for exemptions from the diabetes standard; request for comments.

SUMMARY: FMCSA announces receipt of applications from 66 individuals for exemptions from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate commercial motor vehicles in interstate commerce.

DATES: Comments must be received on or before March 3, 2008.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2007–0070 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket ID for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov*, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78; Apr. 11, 2000). This information is also available at *http://Docketinfo.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statutes also allow the Agency to renew exemptions at the end of the 2-year period. The 66 individuals listed in this notice have recently requested an exemption from the diabetes prohibition in 49 CFR 391.41(b)(3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by the statutes.

Qualifications of Applicants

William E. Amidon

Mr. Amidon, age 71, has had ITDM since 1982. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Amidon meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Florida.

Jack H. Badger, Jr.

Mr. Badger, 67, has had ITDM since 2004. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Badger meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Florida.

Richard L. Burwell

Mr. Burwell, 42, has had ITDM since 2007. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Burwell meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Ohio.

Scott A. Campbell

Mr. Campbell, 42, has had ITDM since 2004. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Campbell meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from Pennsylvania.

David Clemente, Sr.

Mr. Clemente, 51, has had ITDM since 2006. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Clemente meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist

examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New Jersey.

Mark D. Cleveland

Mr. Cleveland, 52, has had ITDM since 1995. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Cleveland meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Washington.

Timothy M. Collier

Mr. Collier, 39, has had ITDM since 1995. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Collier meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class C operator's license from New York.

Danny R. Combs

Mr. Combs, 52, has had ITDM since 2004. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Combs meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Minnesota.

Robert S. Crawford

Mr. Crawford, 60, has had ITDM since 2005. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Crawford meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Anthony S. Cruise

Mr. Cruise, 37, has had ITDM since 2002. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Cruise meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a chauffeur's license from Indiana.

James D. Daly

Mr. Daly, 56, has had ITDM since 1992. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Daly meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class C operator's license from Pennsylvania.

James Davis

Mr. Davis, 68, has had ITDM since 1989. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Davis meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from New Jersey.

William M. Dement

Mr. Dement, 27, has had ITDM since 2007. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Dement meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Missouri.

Lizzie L. Dixon

Ms. Dixon, 36, has had ITDM since 2006. Her endocrinologist examined her in 2007 and certified that she has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Dixon meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2007 and certified that she does not have diabetic retinopathy. She holds a Class D operator's license from New Jersey.

Nathan J. Donley

Mr. Donley, 27, has had ITDM since 1999. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes

management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Donley meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Ohio.

Billy R. Echols

Mr. Echols, 56, has had ITDM since 2007. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Echols meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Alabama.

Jonathan B. Estridge

Mr. Estridge, 28, has had ITDM since 2006. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Estridge meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Arizona.

Gregory A. Fisher

Mr. Fisher, 48, has had ITDM since 2004. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Fisher meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Ohio.

Linda G. Flock

Ms. Flock, 64, has had ITDM since 1995. Her endocrinologist examined her in 2007 and certified that she has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Flock meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her ophthalmologist examined her in 2007 and certified that she has stable nonproliferative diabetic retinopathy. She holds a Class B CDL from California.

Kurt D. Genat

Mr. Genat, 35, has had ITDM since 2003. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Genat meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from Texas.

Kerri J. Gibson

Ms. Gibson, 34, has had ITDM since 1994. Her endocrinologist examined her in 2007 and certified that she has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Gibson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2007 and certified that she does not have diabetic retinopathy. She holds a Class F operator's license from Missouri, which allows her to drive any motor vehicle with a gross vehicle rating of less than 26,001 pounds.

Carlos F. Gonzales

Mr. Gonzales, 58, has had ITDM since 2007. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gonzales meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from Texas.

Larry D. Goughnour

Mr. Goughnour, 49, has had ITDM since 2005. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Goughnour meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Ronald G. Gross

Mr. Gross, 67, has had ITDM since 1999. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gross meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

James O. Hamilton

Mr. Hamilton, 57, has had ITDM since 2003. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the

assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hamilton meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Ohio.

Chester C. Holland

Mr. Holland, 63, has had ITDM since 2007. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Holland meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Florida.

Justin J. Hughes

Mr. Hughes, 27, has had ITDM since 2006. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hughes meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from California.

Phillip R. Hutchinson

Mr. Hutchinson, 30, has had ITDM since 2006. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hutchinson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from Oregon.

Bradley J. Ingemann

Mr. Ingemann, 29, has had ITDM since 1996. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ingemann meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Minnesota.

Robert M. Jasuta

Mr. Jasuta, 38, has had ITDM since 1989. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Jasuta meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Pennsylvania.

William B. Jenks, Jr.

Mr. Jenks, 58, has had ITDM since 1994. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Jenks meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Utah.

Timothy L. Johnson

Mr. Johnson, 37, has had ITDM since 2006. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Johnson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Iowa.

Daniel R. Jones

Mr. Jones, 52, has had ITDM since 2001. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Jones meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

Glenn R. Kerns

Mr. Kerns, 58, has had ITDM since 2001. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kerns meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Michigan.

Kenneth M. Kostelny

Mr. Kostelny, 53, has had ITDM since 2005. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss

of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kostelny meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New York.

Douglas O. Krosch

Mr. Krosch, 57, has had ITDM since 2000. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Krosch meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

John Lewis, Jr.

Mr. Lewis, 68, has had ITDM since 2005. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lewis meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class B CDL from California.

Robert E. Martin

Mr. Martin, 23, has had ITDM since 1987. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Martin meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Missouri.

Henry M. McCurdy

Mr. McCurdy, 63, has had ITDM since 2006. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. McCurdy meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Mississippi.

Thomas J. Montgomery

Mr. Montgomery, 54, has had ITDM since 1996. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Montgomery meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Michigan.

Robert L. Morden

Mr. Morden, 54, has had ITDM since 1986. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Morden meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Arkansas.

Jerry L. Morris

Mr. Morris, 54, has had ITDM since 2004. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Morris meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Mississippi.

Michael D. Mumma

Mr. Mumma, 44, has had ITDM since 1999. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Mumma meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Harold R. Newton

Mr. Newton, 37, has had ITDM since 1998. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Newton meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Arizona.

Clayton W. Noe

Mr. Noe, 25, has had ITDM since 2006. His endocrinologist examined him

in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Noe meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Iowa.

Derek J. Page

Mr. Page, 39, has had ITDM since 2006. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Page meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New York.

Garrett A. Phillips

Mr. Phillips, 23, has had ITDM since 1991. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Phillips meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from New York.

Gary P. Pitts

Mr. Pitts, 60, has had ITDM since 2006. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Pitts meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Texas.

Bruce P. Quaintance

Mr. Quaintance, 57, has had ITDM since 2007. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Quaintance meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New Jersey.

Randy L. Quattlebaum

Mr. Quattlebaum, 47, has had ITDM since 2006. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Quattlebaum meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Texas.

Curtis L. Reed, Jr.

Mr. Reed, 53, has had ITDM since 2001. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Reed meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Mississippi.

Everette W. Roberts

Mr. Roberts, 55, has had ITDM since 2003. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Roberts meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class D operator's license from Alabama.

Mark C. Smith

Mr. Smith, 43, has had ITDM since 2002. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Smith meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Nebraska.

Ryan B. Smith

Mr. Smith, 32, has had ITDM since 1988. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Smith meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Alabama.

Billy J. Stamper

Mr. Stamper, 29, has had ITDM since 2006. His endocrinologist examined him

in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Stamper meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Oklahoma.

Ralph J. Sternhagen

Mr. Sternhagen, 45, has had ITDM since 2005. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Sternhagen meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Iowa.

Robert E. Tauriainen

Mr. Tauriainen, 46, has had ITDM since 2006. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Tauriainen meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from Oregon.

David B. Tomlin

Mr. Tomlin, 50, has had ITDM since 1992. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Tomlin meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Alabama.

Brian T. Tow

Mr. Tow, 49, has had ITDM since 1990. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Tow meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Washington.

Larry N. Trimble

Mr. Trimble, 55, has had ITDM since 2005. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Trimble meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Arizona.

Frederick J. Van Aken, III

Mr. Van Aken, 32, has had ITDM since 1993. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Van Aken meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from California.

Roger K. VanDenbark

Mr. VanDenbark, 62, has had ITDM since 2003. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. VanDenbark meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds an operator's license from Indiana.

Kenneth D. Wallace

Mr. Wallace, 56, has had ITDM since 1999. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wallace meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from Georgia.

Kelly A. Walling

Mr. Walling, 64, has had ITDM since 2005. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Walling meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A operator's license from South Carolina.

Gary J. Weiss

Mr. Weiss, 44, has had ITDM since 1993. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Weiss meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2007 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from South Carolina.

Danny L. Wood

Mr. Wood, 58, has had ITDM since 2006. His endocrinologist examined him in 2007 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wood meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2007 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Oregon.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the dates section of the Notice.

FMCSA notes that Section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).[1] The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) The elimination of the requirement for three years of experience operating CMVs while being treated with insulin; and (2) the establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 Notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 U.S.C. 31136 (e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary. FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 Notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 Notice, except as modified by the Notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

Dated: January 28, 2008.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E8–1898 Filed 1–31–08; 8:45 am]

BILLING CODE 4910–EX–P

[1] Section 4129(a) refers to the 2003 Notice as a ''final rule.'' However, the 2003 Notice did not issue a ''final rule'' but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2000–7257]
[Notice No. 45]

Railroad Safety Advisory Committee; Notice of Meeting

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Announcement of Railroad Safety Advisory Committee (RSAC) meeting.

SUMMARY: FRA announces the 34th meeting of the RSAC, a Federal advisory committee that develops railroad safety regulations through a consensus process. The RSAC meeting topics will include opening remarks from the FRA Administrator, presentations on railroad bridge safety, the Volpe final report on private crossings, the FRA Research and Development Program, and the Risk Reduction Program. Status reports will be provided by the Passenger Safety, Locomotive Safety Standards, Medical Standards, Railroad Operating Rules, and Track Safety Standards Working Groups. The Committee will be asked to vote on recommendations on proposed Emergency Preparedness Rule text, a Vehicle Track Interaction Rule change, regulatory changes, and recommended practices related to the management of continuous welded rail, and station platform gap management guidance. Additionally, FRA may offer for RSAC vote a task on bridge safety. This agenda is subject to change.

DATES: The RSAC meeting is scheduled to commence at 9:30 a.m., and will adjourn at 4 p.m., on Wednesday, February 20, 2008.

ADDRESSES: The RSAC meeting will be held at the National Housing Center, 1201 15th Street, NW., Washington, DC 20005. The meeting is open to the public on a first-come, first-served basis, and is accessible to individuals with disabilities. Sign and oral interpretation can be made available if requested 10 calendar days before the meeting.

FOR FURTHER INFORMATION CONTACT: Larry Woolverton, RSAC Coordinator, FRA, 1200 New Jersey Avenue, SE., Mailstop 25, Washington, DC 20590, (202) 493–6212 or Grady Cothen, Deputy Associate Administrator for Safety, FRA, 1200 New Jersey Avenue, SE., Mailstop 25, Washington, DC 20590, (202) 493–6302.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), FRA is giving notice of a meeting of the RSAC. The RSAC was established to provide advice and recommendations to FRA on railroad safety matters. The RSAC is composed of 54 voting representatives from 31 member organizations, representing various rail industry perspectives. In addition, there are nonvoting advisory representatives from the agencies with railroad safety regulatory responsibility in Canada and Mexico, the National Transportation Safety Board, and the Federal Transit Administration. The diversity of the Committee ensures the requisite range of views and expertise necessary to discharge its responsibilities. See the RSAC Web site for details on pending tasks at *http://rsac.fra.dot.gov/*.

Please refer to the notice published in the **Federal Register** on March 11, 1996,

(61 FR 9740) for additional information about the RSAC.

Issued in Washington, DC on January 28, 2008.

Michael J. Logue,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. E8–1865 Filed 1–31–08; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2000–7257; Notice No. 44]

Railroad Safety Advisory Committee (RSAC); Working Group Activity Update

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Announcement of Railroad Safety Advisory Committee working group activities.

SUMMARY: FRA is updating its announcement of RSAC's working group activities to reflect its current status.

FOR FURTHER INFORMATION CONTACT: Larry Woolverton, RSAC Coordinator, FRA, 1200 New Jersey Avenue SE., Mailstop 25, Washington, DC 20590, (202) 493–6212 or Grady Cothen, Deputy Associate Administrator for Safety, FRA, 1200 New Jersey Avenue SE., Mailstop 25, Washington, DC 20590, (202) 493–6302.

SUPPLEMENTARY INFORMATION: This notice serves to update FRA's last announcement of working group activities and status reports as of October 30, 2007 (72 FR 61418). The 33rd full RSAC Committee meeting was held October 25, 2007, and the 34th meeting is scheduled for February 20, 2008, at the National Housing Center in Washington, DC.

Since its first meeting in April 1996, the RSAC has accepted 24 tasks. The status for each of the tasks is provided below.

Open Tasks

Task 96–4—Reviewing the appropriateness of the Agency's current policy regarding the applicability of existing and proposed regulations to tourist, excursion, scenic, and historic railroads. This task was accepted on April 2, 1996, and a working group was established. The working group monitored the steam locomotive regulation task and planned future activities involving the review of other regulations for possible adaptation to the safety needs of tourist and historic railroads. Contact: Grady C. Cothen, Jr., (202) 493–6302.

Task 03–01—Passenger Safety. This task was accepted on May 20, 2003, and a working group was established. Prior to embarking on substantive discussions of a specific task, the working group sets forth in writing a specific description of the task. The working group also reports planned activity to the full Committee at each scheduled full RSAC meeting, including milestones for the completion of projects and progress toward completion. At the first meeting held September 9–10, 2003, a consolidated list of issues was completed. At the second meeting held November 6–7, 2003, four task groups were established: emergency preparedness, mechanical-general issues, mechanical-safety appliances, and track/vehicle interaction. The task groups met and reported on activities for working group consideration at the third meeting held May 11–12, 2004, and a fourth meeting was held October 26–27, 2004. The working group met on March 21–22, 2006, and again on September 12–13, 2006, at which time the group agreed to establish a task force on general passenger safety. The full Passenger Safety Working Group met on April 17–18, 2007, and again on December 11–12, 2007. The next meeting is scheduled for June 18, 2008. Contact: Charles Bielitz, (202) 493–6302.

(Emergency Preparedness Task Force) At the working group meeting on March 9–10, 2005, the working group received and approved the consensus report of the Emergency Preparedness Task Force related to emergency egress and rescue access. These recommendations were presented to, and approved by, the full RSAC Committee on May 18, 2005. The working group met on September 7–8, 2005, and additional, supplementary recommendations were presented to, and accepted by, the full RSAC on October 11, 2005. The Notice of Proposed Rulemaking (NPRM) was published on August 24, 2006, and was open for comments until October 23, 2006. The working group agreed upon recommendations for the resolution of final comments during the April 17–18, 2007, meeting. The recommendations were presented to, and approved by, the full RSAC Committee on June 26, 2007. The final rule regarding emergency egress and rescue access is expected to be published in early 2008. The task force met on October 17–18, 2007, and the group reached consensus on the draft rule text for a follow-up NPRM on passenger train emergency systems. The task force presented the draft rule text to the Passenger Safety Working Group on December 11–12, 2007, and the consensus draft rule text will be presented for full RSAC vote during the February 20, 2008, meeting. Contact: Brenda Moscoso, (202) 493–6282.

(General Mechanical Task Force) (COMPLETED) Initial recommendations on mechanical issues (revisions to Title 49 Code of Federal Regulations (CFR) Part 238) were approved by the full Committee on January 26, 2005. At the working group meeting of September 7–8, 2005, the task force presented additional perfecting amendments and the full RSAC approved them on October 11, 2005. An NPRM was published in the **Federal Register** on December 8, 2005 (70 FR 73070). Public comments were due by February 17, 2006. The final rule was published in the **Federal Register** on October 19, 2006, (71 FR 61835) effective December 18, 2006.

(General Passenger Safety Task Force) At the working group meeting on April 17–18, 2007, the task force presented a progress report to the working group. The task force met on July 18–19, 2007, and afterwards it reported proposed reporting cause codes for injuries involving the platform gap, which were approved by the working group by mail ballot in September 2007. The full RSAC approved the recommendations for changes to 49 CFR Part 225 accident/incident cause codes on October 25, 2007. The task force continues work on passenger train door securement, ''second train in station,'' trespasser incidents, and system safety-based solutions by developing a regulatory approach to system safety. The General Passenger Safety Task Force presented draft guidance material for management of the gap, which was considered and approved by the working group during the December 11–12, 2007, meeting and will present the material to the full RSAC for approval during the February 2008 meeting. Contact: Dan Knote, (631) 567–1596.

(Passenger Equipment Crashworthiness Task Force) The Crashworthiness Task Force provided consensus recommendations on static-end strength, which were adopted by the working group on September 7–8, 2005. The full Committee accepted the recommendations on October 11, 2005. The Front-End Strength of Cab Cars and Multiple-Unit Locomotives NPRM was published in the **Federal Register** on August 1, 2007, (72 FR 42016) with comments due by October 1, 2007. Several comments were entered into the docket. FRA is evaluating each of the comments received, and plans to have the final rule text completed by June 2008. To demonstrate the means of

determining compliance with the crashworthiness requirements of the rule, FRA has scheduled two full-scale deformation tests as prescribed in the NPRM, a corner post test in February 2008, a collision post test in March 2008, and a dynamic test in April 2008. Contact: Gary Fairbanks, (202) 493–6322.

(Vehicle/Track Interaction Task Force) The task force is developing proposed revisions to 49 CFR Parts 213 and 238 principally regarding high-speed passenger service. The task force met on October 9–11, 2007, and November 19–20, 2007, in Washington, DC, and presented the final task force report and final recommendations and proposed rule text for approval by the Passenger Safety Working Group at the December 11–12, 2007, meeting. The final report and the proposed rule text were approved by the working group and the proposal will be presented to the full RSAC for approval at the February 2008 meeting. Contact: John Mardente, (202) 493–1335.

Task 05–01—Review of Roadway Worker Protection Issues. This task was accepted on January 26, 2005, to review 49 CFR Part 214, Subpart C, Roadway Worker Protection, and related sections of Subpart A; recommend consideration of specific actions to advance the on-track safety of railroad employees and contractors engaged in maintenance-of-way activities throughout the general system of railroad transportation, including clarification of existing requirements. A working group was established and reported to the RSAC any specific actions identified as appropriate. The first meeting of the working group was held on April 12–14, 2005. The working group reported planned activity to the full Committee at each scheduled Committee meeting, including milestones for completion of projects and progress toward completion. The working group met on June 22–24, 2005, August 8–11, 2005, September 20–22, 2005, November 8–9, 2005, January 10–11, 2006, February 1–2, 2006, March 15–16, 2006, April 11–12, 2006, August 22–23, 2006, November 14–15, 2006, January 17–18, 2007, February 27–28, 2007, and March 1, 2007. The group drafted and accepted regulatory language for various revisions, clarifications, and additions to 32 separate items in 19 sections of the rule. However, two parties raised technical concerns regarding the draft language concerning the electronic display of track authorities. The working group reported recommendations to the full Committee at the June 26, 2007, meeting. FRA, through the NPRM process, is to address this issue along with eight additional items on which the working group was unable to reach a consensus. A draft NPRM is currently under review by FRA Office of Safety staff and legal counsel, and is expected to be published in early 2008. Contact: Christopher Schulte, (610) 521–8201.

Task 05–02—Reduce Human Factor-Caused Train Accident/Incidents. This task was accepted on May 18, 2005, to reduce the number of human factor-caused train accidents/incidents and related employee injuries. An Operating Rules Working Group has been established. The working group reports planned activity to the full Committee at each scheduled full RSAC meeting, including milestones for completion of projects and progress toward completion. The working group met on July 12–13, 2005, August 31–September 1, 2005, September 28–29, 2005, October 25–26, 2005, November 16–17, 2005, and December 6–7, 2005. The final working group meeting, devoted to developing a proposed rule, was held February 8–9, 2006. The working group was not able to deliver a consensus regulatory proposal, but did recommend that it be used to review comments on FRA's NPRM, which was published in the **Federal Register** on October 12, 2006, (FR 71 60372) with public comments due by December 11, 2006. Two reviews were held; one on February 8–9, 2007, and the other on April 4–5, 2007. Consensus was reached on four items, which were presented and accepted by the full RSAC Committee at the June 26, 2007, meeting. The most recent working group meeting was held September 27–28, 2007, and the next scheduled meeting will occur on January 17–18, 2008. Contact: Douglas Taylor, (202) 493–6255.

Task 06–01—Locomotive Safety Standards. This task was accepted on February 22, 2006, to review 49 CFR Part 229, Railroad Locomotive Safety Standards, and revise as appropriate. A working group was established with the mandate to report any planned activity to the full Committee at each scheduled full RSAC meeting, to include milestones for completion of projects and progress toward completion. The first working group meeting was held May 8–10, 2006. Working group meetings were held on August 8–9, 2006, September 25–26, 2006, October 30–31, 2006, January 9–10, 2007, and the working group presented recommendations regarding revisions to requirements for locomotive sanders to the full RSAC on September 21, 2006. The NPRM regarding sanders was published in the **Federal Register** on March 6, 2007 (72 FR 9904). Comments received were discussed by the working group for clarification, and FRA published a final rule on October 19, 2007 (72 FR 59216). The working group is continuing the review of 49 CFR Part 229 with a view to proposing further revisions to update the standards. The working group met November 27–28, 2007, and the next meeting is scheduled for February 5–6, 2008. *Contact: George Scerbo, (202) 493–6249.*

Task 06–02—Track Safety Standards and Continuous Welded Rail. Section 9005 of the Safe Accountable Flexible Efficient Transportation Equity Act: A Legacy for Users (Pub.L. No. 109–59, ''SAFETEA–LU''), the 2005 Surface Transportation Authorization Act, requires FRA to issue requirements for inspection of joint bars in continuous welded rail (CWR) to detect cracks that could affect the integrity of the track structure (Title 49 U.S.C. 20142(e)). FRA published an interim final rule (IFR) establishing new requirements for inspections on November 2, 2005 (70 FR 66288). On October 11, 2005, FRA offered the RSAC a task to review comments on this IFR, but the conditions could not be established under which the Committee could have undertaken this with a view toward consensus. Comments on the IFR were received through December 19, 2005, and FRA reviewed the comments. On February 22, 2006, the RSAC accepted this task to review and revise the CWR related to provisions of the Track Safety Standards, with particular emphasis on the reduction of derailments and consequent injuries, and damage caused by defective conditions, including joint failures, in track using CWR. A working group was established. The working group will report any planned activity to the full Committee at each scheduled full RSAC meeting, including milestones for completion of projects and progress toward completion. The first working group meeting was held April 3–4, 2006, at which time the working group reviewed comments on the IFR. The second working group meeting was held April 26–28, 2006. The working group also met May 24–25, 2006, and July 19–20, 2006. The working group reported consensus recommendations for the final rule, which were accepted by the full RSAC Committee by mail ballot on August 11, 2006. The final rule was published in the **Federal Register** on October 11, 2006 (71 FR 59677). The working group is continuing its review of 49 CFR 213.119 with a view to proposing further revisions to update the standards. The working group met

January 30–31, 2007, April 10–11, 2007, June 27–28, 2007, August 15–16, 2007, and October 23–24, 2007, and the next meeting is scheduled for January, 8–9, 2008. Contact: Ken Rusk, (202) 493–6236.

Task 06–03—Medical Standards for Safety-Critical Personnel. This task was accepted on September 21, 2006, to enhance the safety of persons in the railroad operating environment and the public by establishing standards and procedures for determining the medical fitness of duty of personnel engaged in safety-critical functions. A working group was established and will report any planned activity to the full Committee at each scheduled full RSAC meeting, including milestones for completion of projects and progress toward completion. The first working group meeting was held December 12–13, 2006. The working group met on February 20–21, 2007, July 24–25, 2007, August 29–30, 2007, October 31–November 1, 2007, and December 4–5, 2007. A task force of physicians was established in May 2007 to work on specific medical exam-related issues. The task force had meetings or conference calls on July 24, 2007, August 20, 2007, October 15, 2007, and October 31, 2007. The next Medical Standards Working Group meeting is scheduled for February 13–14, 2008. Contact: Alan Misiaszek, (202) 493–6002.

Task 07–01—Track Safety Standards. This task was accepted on February 22, 2007, to consider specific improvements to the Track Safety Standards or other responsive actions, supplementing work already underway on CWR, specifically: review controls applied to the reuse of rail in CWR ''plug rail,'' review the issue of cracks emanating from bond wire attachments, consider improvements in the Track Safety Standards related to fastening of rail to concrete ties, and ensure a common understanding within the regulated community concerning requirements for internal rail flaw inspections. These tasks were assigned to the Track Safety Standards Working Group. The working group will report any planned activity to the full Committee at each scheduled full RSAC meeting, including milestones for completion of projects and progress toward completion. The first working group meeting was held on June 27–28, 2007, and the group met again on August 15–16, 2007, and October 23–24, 2007. Two task forces were created under the working group; the Concrete Ties Task Force and the Rail Integrity Task Force. The Concrete Ties Task Force first met on November 26–27, 2007, and the next meeting is scheduled for February 13–14, 2008. The Rail Integrity Task Force first met on November 28–29, 2007, and the next meeting is scheduled for February 12–13, 2008. Contact: Ken Rusk, (202) 493–6236.

Completed Tasks

Task 96–1—(Completed) Revising the Freight Power Brake Regulations.

Task 96–2—(Completed) Reviewing and recommending revisions to the Track Safety Standards (49 CFR Part 213).

Task 96–3—(Completed) Reviewing and recommending revisions to the Radio Standards and Procedures (found under 49 CFR Part 220).

Task 96–5—(Completed) Reviewing and recommending revisions to the Steam Locomotive Inspection and Maintenance Standards (49 CFR Part 230).

Task 96–6—(Completed) Reviewing and recommending revisions to miscellaneous aspects of the regulations addressing Locomotive Engineer Certification (49 CFR Part 240).

Task 96–7—(Completed) Developing Roadway Maintenance Machines (On-Track Equipment) Safety Standards.

Task 96–8—(Completed) This planning task evaluated the need for action in response to recommendations contained in a report to Congress entitled, Locomotive Crashworthiness & Working Conditions.

Task 97–1—(Completed) Developing crashworthiness specifications (49 CFR Part 229) to promote the integrity of the locomotive cab in accidents resulting from collisions.

Task 97–2—(Completed) Evaluating the extent to which environmental, sanitary, and other working conditions in locomotive cabs affect the crew's health and the safe operation of locomotives, proposing standards where appropriate.

Task 97–3—(Completed) Developing event recorder data survivability standards.

Task 97–4 and *Task 97–5*—(Completed) Defining positive train control functionalities, describing available technologies, evaluating costs and benefits of potential systems, and considering implementation opportunities and challenges, including demonstration and deployment.

Task 97–6—(Completed) Revising various regulations to address the safety implications of processor-based signal and train control technologies, including communications-based operating systems.

Task 97–7—(Completed) Determining damages qualifying an event as a reportable train accident.

Task 00–1—(Completed—task withdrawn) Determining the need to amend regulations protecting persons who work on, under, or between rolling equipment and persons applying, removing, or inspecting rear end marking devices (Blue Signal Protection).

Task 01–1—(Completed) Developing conformity of FRA's regulations for accident/incident reporting (49 CFR Part 225) to revised regulations of the Occupational Safety and Health Administration, U.S. Department of Labor, and to make appropriate revisions to the FRA Guide for Preparing Accident/Incident Reports (reporting guide).

Please refer to the notice published in the **Federal Register** on March 11, 1996, (61 FR 9740) for more information about the RSAC.

Issued in Washington, DC on January 28, 2008.

Michael J. Logue,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. E8–1861 Filed 1–31–08; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Title 49 Code of Federal Regulations (CFR) Part 211, notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

New Jersey Transit Corporation

[Supplement and Modification To Waiver Petition Docket Number FRA–1999–6135, with New Docket Number FRA–2007–0030]

As a supplement and modification to New Jersey Transit Corporation's (NJ Transit) petition for approval of shared use and waiver of certain FRA regulations (the original Shared Use Waiver was granted by the FRA Railroad Safety Board on December 3, 1999, a 5-year extension and decision regarding relief from the FRA Horn Rule was granted by the Safety Board on November 9, 2006), NJ Transit is seeking permission from FRA to modify the temporal separation operating plan to reflect new Burlington and Camden Subdivisions. Also, NJ Transit is asking

FRA to modify the terms and conditions of FRA's November 9, 2006, decision letter seeking a permanent waiver of compliance from requirements of the FRA Horn Rule for continued safe operation of its Southern New Jersey Light Rail Transit (SNJLRT) River Line at seven specific highway-rail grade crossings in the Palmyra and Riverton, NJ, communities. NJ Transit submits that this request is consistent with the waiver process for shared use. (See Statement of Agency Policy Concerning Jurisdiction Over the Safety of Railroad Passenger Operations and Waivers Related to Shared Use of the Tracks of the General Railroad System by Light Rail and Conventional Equipment, 65 FR 42529 (July 10, 2000); also see Joint Statement of Agency Policy Concerning Shared Use of the Tracks of the General Railroad System by Conventional Railroads and Light Rail Transit Systems, 65 FR 42526 (July 10, 2000).)

On April 27, 2005, FRA issued the Final Rule on Use of Locomotive Horns at Highway-Rail Grade Crossings, 70 FR 21844 (2005), with an effective date of June 24, 2005. NJ Transit claimed that although its audible warning operating practices on the River Line are generally in compliance with the rules contained in 49 CFR Parts 222 and 229, Use of Locomotive Horns at Highway Rail Grade Crossings; Final Rule, it needed relief from the requirements of the rule because of the unique operating characteristics of the SNJLRT River Line-particularly the close proximity of highway-rail grade crossings in the communities of Riverton and Palmyra, NJ. As noted and explained in the FRA decision letter dated November 9, 2006, FRA denied NJ Transit relief from the Horn Rule requirements, except at certain locations outlined in the decision letter, including four near-side station stops in the Riverton-Palmyra single track corridor at Cinnaminson Avenue, Morgan Avenue, Thomas Avenue, and Main Street.

With this petition submitted in lieu of instituting quiet zones, NJ Transit again is seeking relief from the requirements of the FRA Horn Rule (use of 83 dB bell in lieu of 86dB horn) at seven of nine actively warned highway-rail grade crossings along this 1.4-mile Riverton-Palmyra single track corridor. The driving force behind this request is that the SNJLRT River Line operates 91 weekday trips through this corridor, generating over 800 audible warnings between 6 a.m. and 10 p.m., causing quality of life issues and noise complaints from nearby residents.

Also with this petition, NJ Transit is seeking permission from FRA to modify the temporal separation operating plan to reflect new Burlington and Camden Subdivisions. The creation of these subdivisions will allow SNJLRT light rail vehicles in a particular subdivision to operate concurrently when Conrail freight trains are either late in clearing tracks in the other subdivision or they report clear for the remainder of the freight window. The subdivisions will be delineated where switches can be reversed and blocked to prevent movements outside each respective subdivision.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2007–0030) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–19478).

Issued in Washington, DC on January 28, 2008.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E8–1863 Filed 1–31–08; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Village of Elmwood Park, Illinois

[Waiver Petition Docket Number FRA–2007–0022]

The Village of Elmwood Park, Illinois (Village) and the Northeastern Illinois Commuter Rail Corporation (Metra) seek a permanent waiver of compliance from a certain provision of the *Use of Locomotive Horns at Highway-Rail Grade Crossings,* 49 CFR Part 222. The Village intends to establish a new partial quiet zone consisting of four public highway-rail at-grade crossings and two pedestrian at-grade crossings. The Village and Metra are seeking a waiver to modify the hours of a new partial quiet zone as provided in 49 CFR Part 222.9, definition of a new partial quiet zone that states that locomotive horns are not routinely sounded between the hours of 10 p.m. and 7 a.m. The waiver petition requests that the time period for the new partial quiet zone is between 10 p.m. and 6 a.m. as recommended by the Illinois Commerce Commission (ICC) to better reflect the existing traffic conditions. The ICC made these comments during a diagnostic team meeting on September 5, 2007, and in a letter to the Village dated September 11, 2007.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2007–0022) and may be submitted by any of the following methods:

Web site: http://www.regulations.gov. Follow the online instructions for submitting comments.

Fax: 202–493–2251.

Mail: Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.

Hand Delivery: 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–19478).

Issued in Washington, DC on January 28, 2008.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E8–1866 Filed 1–31–08; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket NHTSA–2006–25344]

Consumer Information; Rating Program for Child Restraint Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice, final decision.

SUMMARY: In response to Section 14(g) of the Transportation Recall Enhancement, Accountability, and Documentation Act, the National Highway Traffic Safety Administration established a yearly ease of use assessment program for add-on child restraints. Since the program was established, the most notable improvements have been made to child restraint harness designs, labels, and manuals. On November 23, 2007, the agency published a notice seeking comment on revisions to the program. This notice summarizes the comments received and provides the agency's decision on how we will proceed. The agency has decided to enhance the program by including new rating features (the design aspects that are being evaluated) and criteria (the questions that evaluate the feature), adjusting the scoring system, and using stars to display the ease of use rating. We anticipate that these program changes will result in a more robust rating program for consumers while continuing to encourage manufacturers to refine current features and in some cases, install more features that help make child restraints easier to use.

FOR FURTHER INFORMATION CONTACT: For technical issues related to the Ease of Use rating program, you may call Nathaniel Beuse of the Office of Crash Avoidance Standards, at (202) 366–4931. For legal issues, call Deirdre Fujita of the Office of Chief Counsel, at (202) 366–2992. You may send mail to these officials at the National Highway Traffic Safety Administration, 1200 New Jersey Ave., SE., Washington, DC, 20590.

SUPPLEMENTARY INFORMATION:

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I. Introduction

In response to the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) [1] Act, the National Highway Traffic Safety Administration (NHTSA) issued a final rule [2] on November 5, 2002 that established a program that rates child restraint systems (CRS) on how easy they are to use.[3] To date, the agency's Ease of Use (EOU) program has been very successful in encouraging child restraint manufacturers to improve child restraint designs, labels, and manuals such that now nearly all child restraints achieve the top rating. While child restraint manufacturers are to be commended for their overwhelming response to the program, today the ratings are such that it is difficult for consumers to discern ease of use differences between products.

On November 23, 2007, NHTSA published a request for comment on the agency's considered updates to the features and criteria used in the child restraint EOU ratings program, along with the method in which the ratings are displayed to consumers (72 FR 65804, Docket 2006–25344). In proposing these revisions, the agency considered recent consumer use surveys conducted by the agency and others on Lower Anchors and Tethers for Children (LATCH), public comments submitted as a result of NHTSA's February 8, 2007 public meeting on LATCH,[4] a comprehensive study of the agency's EOU program, and feedback from current EOU raters.

Our request for comment highlighted several changes that we believed would encourage consumers to purchase and manufacturers to provide easier to use features, in particular for LATCH hardware and child restraint harnesses. These changes would also allow the agency to begin recognizing newer design features that have entered the market since the program's inception. We also sought to provide continued incentive for manufacturers to design child restraint features that are intuitive and easier to use. We sought comment on proposed changes to the numerical break points (e.g. ranges) used to assign different ratings to the restraints in

[1] Section 14 (g) of the TREAD Act, November 1, 2000, Pub. L. 106–414, 114 Stat. 1800.

[2] 67 FR 67448, Docket NHTSA–2001–10053.

[3] The EOU rating does not compare the crash performance of different child restraints. However, a child restraint is most effective if corectly installed in the vehicle as well as properly adjusted to the child. A child restraint that is easier to use should theoretically havea lower misuse rate.

[4] 72 FR 3103, January 24, 20007. Full transcript can be found in Docket Number NHTSA–2007–26833–23.

order to make the top rating harder to achieve. In addition to making the top ratings harder to achieve, the agency also requested comment on changes to the way it presents EOU ratings to the public. Rather than using a 3-level letter grading system, the agency proposed that the upgraded EOU ratings would be presented to consumers using our familiar 5-level star rating system, such as used in our vehicle safety ratings program. In conjunction with the rating criteria and feature changes, this change would allow for more levels of differentiation among products, and a more user-friendly system for consumers to use in making their purchasing decisions.

In response to the notice, the agency received comments from research organizations, consumer groups, child restraint manufacturers and a trade organization representing a number of child seat manufacturers. While all of the commenters supported our efforts to update the EOU program, there were three main issues where the majority of commenters disagreed with the agency's proposal. These issues involved the proposal to use stars to display child restraint ratings, the proposed labeling features, and proposed features relating to harness and LATCH lower attachment designs. This notice summarizes the comments, provides the agency's analysis of those comments, and implements our proposal to enhance the EOU rating program.

II. Summary of Request for Comments

In our November 23, 2007, **Federal Register** notice, the agency proposed to continue rating each child restraint under every mode of correct use via three separate forms: rear-facing (RF), forward-facing (FF), and booster. We also discussed some significant changes with regard to the categories, features, and criteria used for rating child restraints. In addition, we proposed an update to the break points used to assign ratings to the restraints in an effort to make the top rating harder to achieve. The agency also proposed to change the way it presents the child restraint EOU ratings to the public.

We pursued these changes because we first wanted to incorporate features that were not included in the original program. Secondly, we wanted to strengthen some existing features by reducing their criteria from three levels to two, reducing grade inflation resulting in an overall feature that is easier for the raters to evaluate. Thirdly, we wanted to combine related features into one in order to reduce redundancy. Lastly, we deleted some redundant features to also reduce the occurrence of grade inflation. The proposed changes are highlighted below.

A. Rating Categories and Their Associated Features

1. Assembly

The agency proposed to eliminate the ''Assembly'' rating category but distribute the features from this category among the ''Evaluation of Instructions'' and ''Securing the Child'' categories as they were still needed. The agency believed that most of the features in this category should be rated only under one mode (in the case of multi-mode child restraints) to reduce grade inflation. In addition, we believed that some features should have their rating criteria reduced from three levels to two.

2. Evaluation of Labels

Under this category, the agency proposed upgrading the rating forms to better assess child restraint labels for accuracy and completeness. The proposed rating forms contained the following features (each mode the feature would apply to is included in the parentheses):

a. Clear indication of child's size range. (RF, FF, Booster)
b. Are all methods of installation for this mode of use clearly indicated? (RF, FF, Booster)
c. Are the correct harness slots for this mode indicated? (RF, FF)
d. Label warning against using a lap belt only. (Booster)
e. Seat belt use and routing path clarity. (RF, FF, Booster)
f. Shows how to prepare and use lower attachments. (RF, FF)
g. Shows how to prepare and use tether. (FF)
h. Durability of labels. (RF, FF, Booster)

a. Clear indication of child's size range. (RF, FF, Booster)

The agency proposed to expand this feature to assess whether the child restraint labels contain additional sizing information beyond the required height and weight limits of Federal Motor Vehicle Safety Standard No. 213,[5] ''*Child Restraint Systems*''. We believed that parents and caregivers would benefit from visual indicators that describe how an appropriately sized child should fit in the restraint and noted that a limited number of child restraints currently provide this information.

b. Are all methods of installation for this mode of use clearly indicated? (RF, FF, Booster)

The agency suggested that it was going to clarify the criteria for the FF mode so that the tether is labeled with every configuration. We believed that the clarification would help reinforce the use of the tether with a FF child restraint.

c. Are the correct harness slots for this mode indicated? (RF, FF)

The agency proposed an update to this feature so that it included criteria to evaluate whether harness slots are labeled to indicate the modes of use to which they correspond. In addition, the agency proposed that the child restraint should indicate graphically how the harness should fit the child's shoulders. By doing this, multi-mode child restraints would be encouraged to label harness slots for both the rear-facing and forward-facing modes and all restraints would provide caregivers with a visual that allows them to assess the child's fit with respect to the harness.

d. Label warning against using a lap belt only. (Booster)

The agency proposed a new feature that would evaluate the presence of an illustrated warning advising against the use of a lap belt only if a booster is not supposed to be used with one. In making this proposal, the agency was not aware of any booster seats in the current market that were recommended for use with a lap belt only. The agency felt that the presence of an illustration could reinforce that these devices should only be used with a lap-shoulder belt.

e. Seat belt use and routing path clarity. (RF, FF, Booster)

We proposed to strengthen this feature by encouraging child restraints manufacturers to label belt and flexible lower anchor paths on both sides of the restraint. We believed this was necessary to ensure that regardless of the user's point of installation, the belt and lower anchor path can easily be seen.

f. Shows how to prepare and use lower attachments. (RF, FF)

The agency proposed to combine two previous lower attachment-related features into one to make the resulting feature more objective and encourage more manufacturers to include better information. The proposed feature would evaluate whether the labels clearly depict all steps of lower attachment preparation and use.

g. Shows how to prepare and use tether. (FF)

The agency proposed to evaluate child restraints on whether proper tether use and preparation was sufficiently explained by clear illustrations and concise text on the child restraint labels. This update would help to encourage more widespread, correct use of the top tether.

[5] See 49 CFR 571.213

h. Durability of labels. (RF, FF, Booster)

In order to improve the strength of this feature as well as the rating system in general, the agency proposed to modify this feature so that we will only assess the durability of the labels on multi-mode child restraints once, in their youngest mode. For example the durability of the labels on a convertible child restraint would only be evaluated once, in the rear facing mode of use.

3. Evaluation of Instructions

For this category, the most significant change proposed by the agency was to reduce the weighted value for the majority of the features. Most of the concepts rated under the ''Evaluation of Labels'' category are also reflected in the ''Evaluation of Instructions'' category so there was little need to rate them highly in both places. We also believe that pertinent information about correct daily use should be communicated clearly on the child restraint labels as well as in the instruction manual. The proposed rating forms contained the following features. Each mode the feature applies to is included in the parentheses:

a. Owner's manual easy to find? (RF, FF, Booster)
b. Evaluate the manual storage system access in this mode. (RF, FF, Booster)
c. Clear indication of child's size range. (RF, FF, Booster)
d. Are all methods of installation for this mode of use clearly indicated? (RF, FF, Booster)
e. Air bag/rear seat warning? (RF, FF, Booster)
f. Instructions for routing seat belt. (RF, FF, Booster)
g. Shows how to prepare & use lower attachments. (RF, FF)
h. Information in written instructions and on labels match? (RF, FF, Booster)

a. Owner's manual easy to find? (RF, FF, Booster)

This feature was previously located under the ''Assembly'' category. In proposing to delete that category, the agency felt that the feature was still needed but that it should be moved to the ''Evaluation of Instructions'' category. Also, the agency proposed that this feature would now be assessed only once, when the child restraint is being evaluated in its youngest mode of use, to reduce grade inflation.

b. Evaluate the manual storage system access in this mode. (RF, FF, Booster)

Previously, this feature was assessed under the ''Assembly'' section, but similar to the feature above, the agency proposed to move it to this category. In addition, the agency also modified the feature to evaluate whether the storage device is difficult to access in addition to whether it is difficult to find or use. We believe that the child restraint manual should be easily stored, and the user should be able to retrieve it while the child restraint is installed and the child is in the restraint.

c. Clear indication of child's size range. (RF, FF, Booster)

Similar to the updated label feature, the agency proposed that this criterion be expanded to include whether child restraint instructions contain additional sizing information beyond the height and weight limits of FMVSS No. 213.

d. Are all methods of installation for this mode of use clearly indicated? (RF, FF, Booster)

To reinforce the use of the tether with FF child restraints and if allowed by the manufacturer for boosters, the agency proposed clarifying the previous feature to encourage that the tether is labeled and pictured with every installation configuration.

e. Air bag/rear seat warning? (RF, FF, Booster)

The agency proposed to modify this feature so that instead of encouraging the identical warning for each type of child restraint, FF and booster seat instructions would be encouraged to contain warnings about the rear seat being the safest place for children only. With the exception of seats rated in the RF mode, the agency did not indicate a separate label was needed to do this. In this way, the instructions would be more consistent with child passenger safety recommendations. Child restraints evaluated under the RF forms would still need to convey this information in addition to the current FMVSS No. 213 airbag warning requirements for a separate, obvious, illustrated warning.

f. Instructions for routing seat belt. (RF, FF, Booster)

The agency proposed to enhance this feature by also evaluating whether manufacturers provided information on different seat belts styles, retractor types, and latch plate types and how each should be used with the child restraint in question. In this way, loose and incorrect installations due to seat belt misuse could be reduced.

g. Shows how to prepare & use lower attachments and tether. (RF, FF)

As in the ''Evaluation of Labels'' section, the agency proposed combining the ''preparing'' and ''using'' features for the lower attachments to reduce redundancy. Similarly, we proposed to remove the separate feature calling for a diagram depicting the correct orientation of the lower attachments. Additionally, it was proposed that FF child restraints be evaluated on whether or not they have complete tether directions.

h. Information in written instructions and on labels match? (RF, FF, Booster)

Because the agency still observed instances in which there was conflicting information between the written instructions and the labels, in addition to the existing criteria, the agency proposed new criteria that would evaluate whether or not all pictures on the labels are conveying the same information as in the written instructions. Also, for the purposes of recalls, the agency proposed that the presence of the child restraint model name be evaluated.

4. Securing the Child

The agency proposed the most changes in this category, which assesses child restraint features that help secure the child in the restraint. New features were proposed to be added to the rating and a number of previous features were combined to reduce grade inflation. We also proposed changes to many of the criteria used to evaluate the features.

The proposed rating forms contained the following features. Each mode the feature applies to is included in the parentheses:

a. Is the restraint assembled & ready to use? (RF, FF, Booster)
b. Does harness clip require threading? Is it labeled? (RF, FF)
c. Evaluate the harness buckle style. (RF, FF)
d. Access to and use of harness adjustment system. (RF, FF)
e. Number and adjustability of harness slots in shell and pad. (RF, FF)
f. Visibility & alignment of harness slots. (RF, FF)
g. Ease of conversion to this mode from all other possible modes of use. (RF, FF, Booster)
h. Ease of conversion from high back to no back. (Booster)
i. Ease of adjusting the harness for child's growth. (RF, FF)
j. Ease of reassembly after cleaning. (RF, FF, Booster)
k. Ease of adjusting/removing shield. (RF, FF)

a. Is the restraint assembled & ready to use? (RF, FF, Booster)

This feature was previously located under the ''Assembly'' category. Since the agency proposed to delete that category, we felt that ''Securing the Child'' was its next appropriate location. We also proposed to reduce its three levels of criteria to two and to only evaluate this feature once, in the child restraint's youngest mode of use, in order to reduce grade inflation.

b. Does harness clip require threading? Is it labeled? (RF, FF)

The agency proposed this new feature to evaluate the harness clip on a restraint. This feature would discourage

harness clips that require threading by the user each time the child is buckled into the child restraint and encourage the presence of a graphic or simple text that would provide a reminder of where the harness clip should be positioned on the properly restrained child. We believe that this will increase correct harness clip usage.

c. Evaluate the harness buckle style. (RF, FF)

Some buckle designs, known as ''dual entry,'' allow the user to insert each side of the buckle independently while ''single entry'' styles require the user to hold the two shoulder portions of the buckle together and insert them at the same time. The agency believes that there are varying degrees of ease of use with these designs and proposed to modify this feature to evaluate how easy it is to use one type of harness buckle over another.

d. Access to and use of harness adjustment system. (RF, FF)

The agency believes that the ability to tighten the harness system should be accessible regardless of the installation mode. As such, in our proposal, the agency stated it would combine two previously separate features evaluating access to and use of the harness tightening system into one new feature. Additionally, the agency proposed that it would reduce the number of rating criteria for the upgraded feature from three levels to two.

e. Number and adjustability of harness slots in shell and pad. (RF, FF)

The agency proposed to reduce grade inflation surrounding related harness slot criteria by combining them into one. Previously, the agency evaluated whether the number of harness slots in the child restraint shell and seat pad matched and then separately evaluated how many there were. The agency will now evaluate these concepts as one feature.

f. Visibility & alignment of harness slots. (RF, FF)

The agency proposed applying this feature only to child restraints with re-thread harness systems. Child restraints with ''no-thread'' harness systems would be rated an ''n/a'' for this feature since its primary purpose is to help facilitate rethreading.

g. Ease of conversion to this mode from all other possible modes of use. (RF, FF, Booster)

Because the relative complexity of converting a child restraint between its different modes was not fully reflected, the agency proposed a restructure of these features so that they better assess the entire process. In doing so, we recognized that many 3-in-1 and multi-mode child restraints would have difficulty achieving the top rating for this feature. However, we believed, given the relative difficulty of converting child restraints between modes, as well as the potential to introduce gross misuse and misplace critical pieces, that it was important to include such a feature.

h. Ease of conversion from high back to no back. (Booster)

The agency proposed to add this separate feature to assess the difficulty of converting high back boosters to backless boosters.

i. Ease of adjusting the harness for child's growth. (RF, FF)

The agency proposed to strengthen the criteria for this feature to continue encouraging harness adjustment systems that do not require rethreading, are easy to understand, and are simple to use.

j. Ease of reassembly after cleaning. (RF, FF, Booster)

The agency proposed to clarify the existing criteria used to evaluate this feature. We will assess whether or not the harness requires rethreading, if loose critical parts are generated during disassembly, and whether the cover can be easily removed and replaced. We also proposed a similar feature for boosters, which had not been previously rated using a feature of this type.

k. Ease of adjusting/removing shield. (RF, FF)

Other than clarifying that the instructions for using these devices should be located on the child restraint itself, the agency did not propose any changes to this feature.

5. Vehicle Installation Features

The agency proposed that the title of this section be reworded to better clarify its scope. We proposed changes to the features in this category primarily to reduce grade inflation. New features were also proposed to reflect improvements made in child restraint designs since the EOU program began, as well as to include more comprehensive LATCH lower attachment assessments. The proposed rating forms contained the following features. Each mode the feature applies to is included in the parentheses:

a. Ease of routing vehicle belt or flexible lower attachments in this mode. (RF, FF)
b. Can vehicle belt or LATCH attachments interfere with harness? (RF, FF)
c. Evaluate the tether adjustment. (FF)
d. Ease of attaching/removing infant carrier from its base. (RF)
e. Ease of use of any belt positioning devices. (RF, FF, Booster)
f. Does the belt positioning device allow slack? Can the belt slip? (Booster)
g. Evaluate child restraint's angle feedback device and recline capabilities on the carrier and base. (RF)
h. Do the lower attachments require twisting to remove from vehicle? (RF, FF)
i. Storage for the LATCH system when not in use? (RF, FF)
j. Indication on the child restraint for where to put the carrier handle? (RF)

a. Ease of routing vehicle belt or flexible lower attachments in this mode. (RF, FF)

Previously, the EOU program evaluated the ease of routing the seat belt and the flexible lower attachments separately, which was redundant since the two paths are normally one and the same. The agency proposed combining the two related features into one to reduce grade inflation and increase the robustness of the rating system.

b. Can vehicle belt or LATCH attachments interfere with harness? (RF, FF)

The original EOU program assessed the potential for unwanted interaction between the harness system and the seatbelt or the flexible lower attachments during routing, which was redundant since the two paths are normally one in the same. The agency proposed combining that the two related features into one to reduce grade inflation and increase the robustness of the rating system.

c. Evaluate the tether adjustment. (FF)

The agency proposed strengthening this feature by decreasing the number of criteria used to rate this feature from three to two. The agency hopes that by continuing to encourage simple tether adjustment mechanisms, more parents will opt to use them and use them correctly.

d. Ease of attaching/removing infant carrier from its base. (RF)

The agency proposed upgrading this feature so that it better evaluates the ease of attaching and removing an infant carrier from its base. The agency firmly believes there should be no indication that the carrier can appear secured to the base if it is not. In order to discourage designs that allow for this, the agency proposed updating the criteria for this feature.

e. Ease of use of any belt positioning devices. (RF, FF, Booster)

NHTSA proposed strengthening this feature by updating the criteria used to rate them. The agency would also like to encourage manufacturers to locate instructions for use directly on the restraint itself.

f. Does the belt positioning device allow slack? Can the belt slip? (Booster)

The agency proposed additional criterion for this feature after examining different devices in the current market. It was proposed that in addition to the former criteria, these devices should somehow inhibit the shoulder portion of

the seat belt from slipping out of the device in order to receive the highest rating.

g. Evaluate child restraint's angle feedback device and recline capabilities on the carrier and base. (RF)

The agency proposed additional criteria to evaluate the presence of a separate feedback device on the child restraint rather than the previously accepted ''indicator lines'' on labels. We also proposed to encourage devices with built-in recline devices through this feature.

h. Do the lower attachments require twisting to remove from vehicle? (RF, FF)

After our review of the LATCH system, we believe that that while the ease of installing lower attachments in a vehicle may be similar regardless of type removing them from the vehicle anchorages is not. As a result, we proposed criteria that would encourage lower attachments that retract from the vehicle anchors or that may be removed from the vehicle anchors without having to twist them.

i. Storage for the LATCH system when not in use? (RF, FF)

Largely in response to child passenger safety technicians (CPSTs) and consumer demand, the agency proposed this new feature that would evaluate seats on the presence of a storage system for the lower attachments and tether (FF only) when they are not being used.

j. Indication on the child restraint for where to put the carrier handle? (RF)

The agency also proposed a new RF rating feature that would encourage CRS manufacturers to indicate directly on their products where to place the infant carrier handle during driving conditions.

B. Rating System

As stated above, NHTSA proposed several changes to the rating structure of the program as well as the way in which it conveys those ratings to consumers. The agency proposed to reassign many of the feature weightings and made changes to the numerical ranges used to assign both category and overall ratings. In particular, the agency proposed to assign some features the weighting of ''1'', which was not the case under the original program. Based on our pilot test results, the changes proposed to the features and criteria will create greater distinction between child restraints.

NHTSA also proposed using its familiar five star rating system to convey child restraint EOU ratings to consumers, with five stars being the highest possible category and overall rating. Since the previous ratings were presented using three levels of evaluation (A, B, C), the agency proposed a redistribution of the category and overall weighted averages by the following five levels:

- ''5 stars'' = Result ≥ 2.60
- ''4 stars'' = 2.30 ≤ Result < 2.60
- ''3 stars'' = 2.00 ≤ Result < 2.30
- ''2 stars'' = 1.70 ≤ Result < 2.00
- ''1 star'' = Result < 1.70

The agency believed that displaying EOU ratings in terms of stars rather than letters would be more beneficial for consumers and manufacturers alike. For consumers, the system would be more recognizable. For manufacturers, more potential for effective promotion of their products will likely exist if EOU ratings are displayed using stars.

III. Summary of Comments

The agency received ten comments in response to the notice. They were received from: Safeguard/IMMI (IMMI), Millennium Development Corporation (MDC), American Academy of Pediatrics (AAP), Advocates for Highway and Auto Safety (Advocates), Dorel Juvenile Group (DJG), Graco Children's Products, Inc. (Graco), The Center for Injury Research and Prevention at the Children's Hospital of Philadelphia (CHOP), Juvenile Products Manufacturers Association (JPMA), Safe Ride News Publications/SafetyBeltSafe USA (SRN/SBS–USA), and Safe Kids Worldwide (SKW).

All of the commenters supported NHTSA's efforts to upgrade its EOU rating program to provide consumers with more useful information and encourage the introduction of easier-to-use child restraint features. However, every commenter except AAP that spoke to the issue opposed the agency's proposal to use stars as the new method of conveying EOU ratings to consumers.[6] These commenters felt that the stars would be misconstrued as representing a child restraint's crash protection rating rather than its ease of use. Most of the responses also cautioned that child restraint manufacturers would have a difficult time meeting all of the agency's upgraded labeling criteria, especially in light of upgraded FMVSS 213 labeling.[7] Commenters voiced concerns that not enough space will be available on many child restraints to add labels that would include NHTSA's upgraded EOU requirements. A number of commenters also oppose a variety of features for cost reasons, stating that higher ratings required more expensive equipment that would raise the prices of many products, affecting the consumer's ability to purchase cost-efficient child restraints.

IV. Discussion and Agency Decision

Because many of the comments were relatively specific, the following discussion organizes commenters' concerns and the resulting agency decision by category and individual feature.

A. General Rating System Concerns

1. Multi-Mode & ''Basic'' Child Restraints

MDC[8] and JPMA[9] indicated that the upgraded ratings prevent certain types of basic, low cost child restraints from achieving the highest possible rating. DJG[10] specifically mentioned that it could be difficult for multi-mode child restraints to achieve high ratings in all modes of use. Under our proposal, we acknowledged that it would be more difficult for any child restraint to receive the highest rating; however, we firmly believe that they are still achievable for most products. Similarly, in cases where it is difficult for a multi-mode restraint to achieve the highest rating, the agency believes that the upgraded score better reflects the inherent difficulty in using that style of restraint, especially when switching between modes.

2. Timing of Upgraded Program

JPMA, DJG, and Graco[11] raised concerns about the timing of the upgraded program and the effects it could have on products that did not receive high ratings. As such, DJG expressed interest in a system in which a product could be evaluated prior to its sale in order to allow the manufacturer to make improvements. We agree that there should be some opportunity for CRS manufacturers to receive feedback on their products prior to sale. In light of this, the agency has made arrangements with our current rating contractor[12] to provide this service.

JPMA and Graco indicated concern over the agency's proposal to begin rating products without allowing the manufacturers time to respond to the criteria, citing consumer and retailer confusion about the drop in ratings. The agency understands these concerns but believes it is in the best interest of the consumer to provide the most updated

[6] All commenters except for SNR/SBS–USA and CHOP addressed this issue.

[7] See 49 CFR 571.213.

[8] NHTSA–2006–25344–0020.1.

[9] NHTSA–2006–25344–0024.1.

[10] NHTSA–2006–25344–0025.1.

[11] NHTSA–2006–25344–0027.

[12] To inquire about this service, please contact Alpha Technology Associate, Inc. 6315 Backlick Road, Suite 300, Springfield VA 22150–2632. Phone: (703) 866–4158. Fax: (703) 866–4159.

ratings we have available in a timely fashion. As a result and consistent with SKW, SRN/SBS–USA, CHOP, and AAP, NHTSA does not believe that we need to delay implementation of these program enhancements.

3. Clarification of Terms

JPMA asked that NHTSA clarify a number of terms used throughout the rating forms, including ''illustrated,'' ''illustration,'' ''better,'' and ''clearly.'' NHTSA agrees, and provides the following clarifications in this final notice. ''Illustrated'' or ''illustration'' in terms of these ratings means that a clear graphic, diagram, or photograph exists to convey the idea in question. ''Better,'' generally refers to instances in which the agency clarified language from the previous program. ''Clearly'' implies that it is highly unlikely for the user to misinterpret any part of the graphic or text.

JPMA also asked that the forms contain more objective criteria and specify requirements in more defined terms. However, no specific examples of where this was needed were cited in their submission. In our proposal, the agency outlined a number of ways we have worked to reduce subjectivity in the EOU ratings. NHTSA has experienced excellent repeatability within the EOU ratings program since its inception.[13] The original EOU ratings program was also externally reviewed by a third party who had similar repeatability findings.[14] Our initial pilot testing, published with our proposal, indicated that the upgraded system is as repeatable as the previous one.

B. Rating Categories and Their Associated Features

1. Assembly

SKW,[15] Advocates [16] and JPMA indicated their support for the removal of the Assembly section and NHTSA's decision to disseminate the features among the remaining categories.

2. Evaluation of Labels

AAP indicated support for the agency's approach to encouraging improved child restraint labels, citing the benefits of ''pictorial instructions and labeling specific parts of the restraint according to their correct use.'' [17] SKW, MDC, and JPMA expressed general concerns about whether child restraints on the current market have the physical space available to fit more labeling. These commenters also raised concerns about the upgraded labeling features leading to ''information overload'' for consumers. JPMA remarked that this seems to be in contrast with agency efforts to ''simplify the information on the product.'' The agency agrees that poorly written, text-heavy labeling has the potential to overwhelm and confuse the consumer. However, we reviewed current child restraints on the market and believe that the upgraded labeling features we have proposed can be incorporated into existing and future product designs. The agency also does not believe that we are encouraging an extensive amount of new labeling on child restraints and has already seen a number of child restraints on the market that will receive high ratings. The majority of upgrades to the labeling criteria focus on improving the clarity of information that is already encouraged by the program.

JPMA and SKW also suggested that NHTSA consider developing and rating standardized, universal illustrative icons for use across CRS models. Graco similarly suggested that the agency work with CRS manufacturers and safety advocates to develop standard ''pictograms'' for industry to use in their labeling and instructions. The agency agrees that standard icons would be beneficial to the public. Similarly, a number of manufacturers have already developed improved graphics for conveying these ideas. However, there is no industry or consensus amongst the child passenger safety community as to what these standard icons should be or what icon would relay clear and concise information to consumers. Given our desire to implement the other program enhancements immediately, we do not believe that such criteria can be added to the EOU program at this time. We do believe that standardized icons are a worthwhile endeavor and will certainly work with CRS manufacturers and child passenger safety advocates to develop and consumer test such icons.

SKW specifically mentioned that the agency consider color-coding as an option for labels; in this, they feel that using one color code per mode on a child restraint can help reduce misuse. For example, labels and features that pertain to rear-facing use can be one color while labels and features that pertain to forward-facing use can be another. The agency agrees that this practice has the potential for increasing the clarity of labeling information. However, this type of practice would require additional cooperative effort with the child restraint manufacturers and other interested parties to develop agreement on uniformity and messaging. As such, we cannot incorporate this feature in the EOU ratings at this time. We will instead work with manufacturers and other interested parties to develop this concept further.

a. Clear indication of child's size range. (RF, FF, Booster)

JPMA indicated that there was no need for manufacturers to include so-called ''best practice'' information on CRS labels, stating that ''CRS manufacturers may not agree with this recommendation.'' Advocates and SKW supported the inclusion of this information in the rating system.

The agency would like to take this opportunity to clarify its intentions. Under the upgraded EOU program, the agency is encouraging that CRS labels and manuals include additional sizing information beyond height and weight that can help parents visually determine whether their child properly fits in the restraint. In our proposal, the agency did suggest commonly used indicators such as ''child's head must be no more than 1 inch from top of CRS'' and ''top of his or her ears must be below the top of the restraint'' or pictograms that indicate this type of information. However, this was not intended to be an all-inclusive list. The agency believes every manufacturer can develop visual cues that can help caregivers assess whether their child is appropriately sized for the restraint in question. As a result, the agency is maintaining this feature as it was proposed in the notice.

b. Are all methods of installation for this mode of use clearly indicated? (RF, FF, Booster)

No specific comments indicating concern over our proposal were received. As a result, our proposed feature is being adopted as the final feature.

c. Are the correct harness slots for this mode indicated? (RF, FF)

SKW suggested color coding for different modes of use and that many manufacturers were already using systems that don't require removal to adjust. The agency agrees that color coding has potential but in order to be effective, we believe that all CRS manufacturers would all have to use the same color scheme. Similarly, SKW indicated that color is a significant factor in what type of seat a consumer buys. Given that the agency has no data on which to choose a color and the lack of data to indicate whether or not such

[13] The Original Final Rule (*See* 67 FR 67448, Docket 2001–10053) detailed that any variations between ratings from team to team were never enough to affect the overall rating. The agency's experience agrees with this, and in fact has never even seen variations that affect the category ratings.

[14] NHTSA–2006–25344–0017.1.

[15] NHTSA–2006–25344–0026.

[16] NHTSA–2006–25344–0022.1.

[17] NHTSA–2006–25344–0021.1.

a criteria in this feature would make sense, the agency is not adopting this suggestion at this time.

d. Label warning against using a lap belt only. (Booster)

SKW indicated that the agency should focus more on what consumers should do to as opposed to what they should not. We would like to clarify that the rating system also has a separate feature that encourages the proper use. In effect, the agency is merely seeking to reinforce a manufacturer's own instructions against using a lap belt with belt-positioning boosters. There is also a separate feature that encourages a picture of its proper use with a lap and shoulder belt. As a result, our proposed feature is being adopted as the final feature.

e. Seat belt use and routing path clarity. (RF, FF, Booster)

Advocates and AAP indicated their support for the agency's proposal to encourage belt path labels on both sides of the child restraint, while JPMA expressed concern about available labeling space. The agency believes that this feature is important to include because it can provide the user with critical routing information despite his or her point of installation. In addition, we believe that labels of this type can be integrated onto most child restraints and should not create problems with respect to space as some child restraint manufacturers are already doing this. In light of this, the EOU forms will contain this feature and its criteria as proposed.

f. Shows how to prepare and use lower attachments. (RF, FF)

g. Shows how to prepare and use tether. (FF)

CHOP,[18] AAP, SRN/SBS–USA, SKW, and Advocates indicated their support for NHTSA's improved lower attachment and tether labeling criteria as part of our effort to increase both awareness and proper use. SKW indicated that color coding of the tether could encourage more use. The agency is not aware of any data that suggest one way or the other whether or not color coding of the tether would be an effective way to encourage consumers to use the top tether more, especially absent similar coding in the vehicle. As such, we are adopting the proposed feature as the final feature.

h. Durability of labels. (RF, FF, Booster)

SKW and SRN/SBS–USA did not disagree with the agency's proposal but suggested that we should also improve our evaluation of the label criteria by also evaluating whether a label will ''stand up to normal usage'' and under different climate conditions. No suggestions were provided to the agency as to why the current evaluation is deficient or exactly what improvements could be made or how to otherwise evaluate them. As a result, our proposed feature is being adopted as the final feature.

3. Evaluation of Instructions

JPMA, SKW, and MDC indicated their concern that the agency is trying to reduce the consumer's responsibility to read a child restraint's accompanying instructions by relying too heavily on the information presented on CRS labels. The agency would like to stress that this is most certainly not our intention. While we feel that our proposed labeling upgrades may reduce the need for consumers to consult the manual for some daily restraint use, they do not serve to replace the need to read the accompanying manual. We also agree with SKW that CRS manufacturers need to better prioritize the information in the written instructions; however, we do not believe that it is a feature that can be rated easily under the proposed program. This issue requires further discussion with the CRS manufacturers to see how the readability of written instructions can be improved.

a. Owner's manual easy to find? (RF, FF, Booster)

JPMA and SKW supported the inclusion of this feature as a part of NHTSA's EOU program. They also mentioned that this feature should be of primary concern where the instruction manual is concerned and that the following feature pertaining to its storage system should be secondary. The agency agrees, and the proposed rating system structured these two features accordingly; this feature has a higher weighting factor than the following one does. As a result, the enhanced program will contain this feature as proposed.

b. Evaluate the manual storage system access in this mode. (RF, FF, Booster)

MDC and JPMA indicated concern with the agency's inclusion of an upgraded manual storage system feature in the EOU rating. Each stated that particular styles of child restraints that would be difficult to redesign to achieve the highest rating. While the agency recognizes that certain styles of CRS have limited locations available for these devices, we have seen systems across restraint styles that can still receive the highest rating. We encourage manufacturers to develop innovative solutions to the challenge and note that consumers, in our experience, have indicated this is a feature they desire. The upgraded EOU program will contain this feature and its criteria as proposed.

c. Clear indication of child's size range. (RF, FF, Booster)

No specific comments indicating concern over our proposal were received. As a result, our proposed feature is being adopted as the final feature.

d. Are all methods of installation for this mode of use clearly indicated? (RF, FF, Booster)

No specific comments indicating concern over our proposal were received. As a result, our proposed feature is being adopted as the final feature.

e. Air bag/rear seat warning? (RF, FF, Booster)

No specific comments indicating concern over our proposal were received, though SKW asked for clarification on whether the two concepts could be combined into one idea to reduce labeling. The agency would like to clarify that this feature only applies to the instruction manual; therefore, the labeling space considerations expressed by SKW are not an issue. As a result, our proposed feature is being adopted as the final feature.

f. Instructions for routing seat belt. (RF, FF, Booster)

The agency would like to clarify that this feature only applies to the instruction manual; therefore the labeling space considerations mentioned by SKW are not a concern. AAP supported the agency's addition of criteria requiring child restraint manuals to include information about various types of seat belts, latch plates, and seat belt retractor systems. However, AAP cautioned that the agency should pay close attention to the clarity of language as the amount of information pertaining to these devices may be extensive. Advocates suggested NHTSA evaluate this information along with belt lock-off devices and their instructions for use. JPMA opposed the inclusion of this information as part of an EOU rating and stated that the information provided by child seat manufacturers on these items should be ''generic in nature, sending the caregiver to the vehicle owner manual for specifics.''

The agency agrees that there is a definite need for consumers to consult their vehicle owner's manuals when searching for specifics on their vehicle's seat belts. The agency is not seeking to transfer the responsibility for defining vehicle equipment instructions to child restraint manufacturers. We do believe, however, that child restraint manufacturers have a responsibility to

[18] NHTSA–2006–25344–0023.

define seat belt, latch plate, and retractor types that may be used correctly with their products and which may not. As a result, NHTSA will be maintaining this feature as it was proposed. Similarly, in light of the AAP and SKW concerns, the agency would like to work with the manufacturers and others so that the clarity, content, and type of information can be consistent from child restraint to child restraint. Finally, as the agency has a separate feature for rating belt lock-offs, there is no need to include the evaluation of these devices within this feature as well.

g. Shows how to prepare & use lower attachments and tether. (RF, FF)

CHOP, AAP, SRN/SBS–USA, and Advocates indicated support for NHTSA's improved lower attachment and tether requirements as part of our efforts to increase both awareness and proper use. SRN/SBS–USA also suggested that NHTSA encourage an educational message about the benefits of tethers within the instruction manuals to reinforce their importance. The agency recognizes that this may be helpful but the agency is working with CRS manufacturers, child safety advocates, and vehicle manufacturers in the development of a new message and icon (that will be released shortly) to help promote the LATCH system which will partly address the tether-use issue. We also believe that CRS manufacturers will use this new messaging in their manual design as well as their own intuitive ideas to explore additional ways to promote tether use with their products. As such, we will be adopting this feature into the rating system as originally proposed.

h. Information in written instructions and on labels match? (RF, FF, Booster)

No specific comments were received. As a result, our proposed feature is being adopted as the final feature.

4. Securing the Child

The AAP and SKW indicated their support for the agency's proposal to include a variety of new features in this category, including the new harness clip criteria, new harness buckle criteria, and ''no-thread'' harness systems.

a. Is the restraint assembled & ready to use? (RF, FF, Booster)

Advocates and SKW indicated their support for the agency in its decision to retain this feature as a part of its EOU ratings program.

b. Does harness clip require threading? Is it labeled? (RF, FF)

JPMA indicated concern over the agency's proposal to encourage that harness clips are labeled with instructions for their correct use because of space concerns about the devices. AAP and SKW supported the agency's addition of this feature to the program because of its potential safety benefits. The agency agrees with AAP and SKW. We believe that these potential safety benefits are worth encouraging. In addition, we have seen a variety of low-cost, space-conscious solutions that may be used to achieve the highest rating. As a result, the upgraded forms will contain this feature and its criteria as proposed.

c. Evaluate the harness buckle style. (RF, FF)

MDC and SKW indicated concern over the agency's decision to include a feature to evaluate harness buckle style. MDC noted that the single-entry, or ''puzzle buckle,'' has a safety advantage over other styles as they cannot be buckled without inserting all required pieces. SKW indicated that buckle style should be up to the consumer. The agency agrees with both of these commenters. The intent of this feature is merely to capture the distinction that dual entry buckles, which allow for a section of the harness to be buckled without the other, are relatively easier to use than ''puzzle buckles.'' Consumers have indicated to us the desire for the rating system to capture that difference. Similarly, as we indicated in our proposal, there are some ''puzzle buckle'' designs that will also score well. Finally, no evidence was provided by MDC to support the real-world advantage of ''puzzle buckles.'' As a result, the enhanced EOU forms will contain this feature and its criteria as they were proposed.

d. Access to and use of harness adjustment system. (RF, FF)

No specific comments indicating concern over our proposal was received. SKW did indicate that perhaps AAP, JPMA, SRN/SBS–USA, and others should get together to discuss and coordinate on a consolidated consumer guide which discussed different harness designs. If such a group is formed, we would like to participate. Our proposed feature is being adopted as the final feature.

e. Number and adjustability of harness slots in shell and pad. (RF, FF)

No specific comments indicating concern over our proposal were received. As a result, our proposed feature is being adopted as the final feature.

f. Visibility & alignment of harness slots. (RF, FF)

JPMA indicated concern that the agency was rating harness slot visibility in the presence of additional padding such as infant inserts and head pillows [19]. The agency notes that as optional accessories not required for proper use, these items are not required to come attached to the child restraint in order to achieve the highest rating for the assembly-related EOU feature. The manufacturer has the option of leaving these items separate from the CRS in an effort to improve their rating for this feature; this is similar to how most child restraint manufacturers package other optional accessories such as cup holders.

JPMA indicated that the harness slot visibility encouraged by this feature could have the unintended effect of creating overly wide harness slots in the child restraint market. We would like to clarify that the upgraded feature is merely just a combination of the two previous features. As such, there is no substantial change to this feature. The agency does not anticipate that the upgraded criteria will encourage harness slots of any different size than the current EOU program seeks to encourage.

JPMA also proposed that the agency only require that ''any foam between the pad and the molded seat should be in line; however, the sewn pad * * * should be judged acceptable provided the opening in the pad allows easy access to the slots in the foam and the seat back.'' The agency believes that requiring all three components (shell, foam, and pad) to be aligned is ideal from an EOU perspective. As such, the agency has decided that the upgraded forms will contain the feature and criteria as it was previously proposed.

g. Ease of conversion to this mode from all other possible modes of use. (RF, FF, Booster)

No specific comments indicating concern over our proposal were received. SKW questioned whether we were encouraging another label. While FMVSS No. 213 does not require a label of this type, the agency has seen manufacturers electing to include information of this type on their products and would like to encourage others to do so. As long as the information is clear and concise, the agency has no opinion on whether it is included as part of another related label and we are finalizing this proposed feature.

h. Ease of conversion from high back to no back. (Booster)

No specific comments were received. As a result, our proposed feature is being adopted as the final feature.

[19] The agency would like to clarify that the alignment portion of this feature is assessed independently of additional accessories such as body pillows and infant head inserts.

i. Ease of adjusting the harness for child's growth. (RF, FF)

Extensive comments were received on the agency's proposal to upgrade the criteria for this feature. AAP indicated support for the agency's proposal to encourage no-thread harness systems. SKW, JPMA and MDC indicated concern over the upgraded feature for a variety of reasons. While JPMA acknowledged that a ''no thread'' harness offers ease of use benefits for consumers, they also indicated their belief that ''simple, easy to rethread harness design is still a very viable design.'' However, they, along with SKW, cautioned the agency that the higher costs associated with these systems may have the unintended effect of limiting options for consumers who must include cost as a factor in their child restraint purchasing decisions. The agency does not disagree with these statements about rethreadable harnesses. The agency expects that the majority of harnessed child restraints in the near future will continue to utilize a rethreadable harness system design because of a variety of factors, including cost.

However, the agency also believes that the no-thread systems can be an important device in helping decrease child restraint misuse. Rethreading a harness system can be a complicated task, introducing a variety of gross misuses (such as misplaced or misrouted hardware and straps) that would otherwise be avoided if replaced with a no-thread system. In addition, revising the previous harness adjustment criteria for this feature has the added benefit of further improving the robustness of the system. Previously, raters were asked to rate rethreadable harness designs as either a ''B'' or a ''C'' by distinguishing whether the slots were ''large'' or ''small.'' Under the proposed criteria, raters no longer have to distinguish between relative slot sizes since all rethreadable systems will be assigned a ''C'' for that feature. In light of these reasons, the upgraded rating forms will contain this feature and its criteria as we proposed.

j. Ease of reassembly after cleaning. (RF, FF, Booster)

No specific comments indicating concern over our proposal were received. As a result, our proposed feature is being adopted as the final feature.

k. Ease of adjusting/removing shield. (RF, FF)

No specific comments indicating concern over our proposal were received. As a result, our proposed feature is being adopted as the final feature.

5. Vehicle Installation Features

a. Ease of routing vehicle belt or flexible lower attachments in this mode. (RF, FF)

No specific comments were received. As a result, our proposed feature is being adopted as the final feature.

b. Can vehicle belt or LATCH attachments interfere with harness? (RF, FF)

No specific comments indicating concern over our proposal were received. However, SKW did question whether this was more of a convenience issue rather than a safety issue. We believe that a seatbelt or a lower attachment strap routed through a harness can pose a safety issue if that misrouting prevents a secure fit from being achieved. Seatbelt or flexible lower attachment straps tangled with a harness can prevent a secure fit to the vehicle and child. As such, our proposed feature is being adopted as the final feature.

c. Evaluate the tether adjustment. (FF)

No specific comments indicating concern over our proposal were received. However, SKW indicated this feature should also highlight those products that encourage their use. We agree and think that our messaging efforts along with some of the upgraded features we have discussed will help to encourage their use. In addition, this concept is already reflected in some more appropriate features, such as the increased encouragement of tether labeling on the child restraint and in the manual. As a result, the agency will not be incorporating this concept into this specific feature and will adopt this feature as proposed.

d. Ease of attaching/removing infant carrier from its base. (RF)

No specific comments indicating concern over our proposal were received. As a result, our proposed feature is being adopted as the final feature.

e. Ease of use of any belt positioning devices. (RF, FF, Booster)

Comments made by Advocates, JPMA, and MDC suggested a need for the agency to further clarify this feature. We have never evaluated, nor do we intend to evaluate, the ease of using a locking clip through EOU as these devices are not specific to the design of the child restraint in question. The agency recognizes the need for these devices in the marketplace and does not want to discourage manufacturers from providing them to consumers.

For ease of discussion, the agency has used the term ''belt positioning'' to generically represent any belt positioning device found on (integral to) a child restraint. These often vary by the type of restraint. For RF and FF modes, this feature has traditionally rated belt lock-off devices that may be found on the restraint. For booster modes, this feature evaluates the shoulder belt positioning guide.

AAP and SKW indicated support for NHTSA's decision to upgrade the belt positioning feature. MDC and JPMA, on the other hand, indicated concern over NHTSA's proposal to upgrade this feature. JPMA stated that rating the ''ease of use'' of these devices is in itself ''vague and subjective'' which makes it ''difficult for CRS manufacturers to use in evaluating their products.'' Both MDC and JPMA indicated their belief that including the feature in an EOU rating would discourage manufacturers from installing the devices. Under both the original and upgraded rating programs, only those child restraints with these devices are subject to rating under this feature; those that do not have the devices are not rated under this feature. This is consistent with NHTSA's practice for rating other relatively uncommon devices like overhead shields. Given that a similar belt-positioning feature existed on the previous forms, the agency does not feel its inclusion in the upgraded system will prevent manufacturers from installing these devices. The agency also maintains its position that providing instructions for using these devices directly on the child restraint is ideal from a usability standpoint. Therefore, the EOU forms will contain this feature and its criteria as proposed in the previous Notice.

f. Does the belt positioning device allow slack? Can the belt slip? (Booster)

No specific comments were received. As a result, our proposed feature is being adopted as the final feature.

g. Evaluate child restraint's angle feedback device and recline capabilities on the carrier and base. (RF)

In response to JPMA, the agency would like to clarify that ''three levels of recline'' is an equivalent term to ''three adjustment levels.'' The agency would also like to clarify the requirement for separate feedback devices as it pertains to infant seats. The feature does not require that one device is installed on the base and another is installed on the carrier. The CRS manufacturer has the option of installing the device on either the base or the carrier; the agency believes however, that if the carrier may be installed alone, that device should be located on the carrier.

AAP and SKW indicated support for the agency's upgraded feature encouraging separate recline feedback devices on child restraints that may be

used rear-facing. AAP further added that the agency should encourage CRS manufacturers to include information to assist caregivers in their proper use and importance. AAP also suggested that the agency consider encouraging manufacturers to provide additional guidance in the instructions if the written restraint's built-in device cannot achieve the proper recline angle. JPMA indicated concern over the inclusion of a feature encouraging a separate feedback device on RF child restraints, citing their additional cost as a drawback as well as their limitations in use.[20]

The agency believes that the ability of these devices to provide feedback to the user makes them preferred from an ease of use standpoint. The agency also believes that ''indicator lines'' printed on child restraint labels have an increased tendency to go unnoticed and perhaps unused when compared to separate feedback devices. The agency is aware that some child restraints with multiple recline levels may still have difficulty achieving the proper recline angle in certain vehicles; however we agree with AAP that this information is useful for consumers. Though we have not included a feature to evaluate this under the upgraded rating system, it has been the agency's experience that the vast majority of manufacturers already include information of this type in their instruction manuals. The agency hopes that by encouraging appropriate child restraints to come with built-in recline mechanisms and feedback devices, we can also help reduce the need for consumers to install child restraints with accessories such as pool noodles or rolled towels. As a result, the upgraded forms will contain this feature and its criteria as proposed.

h. Do the lower attachments require twisting to remove from vehicle? (RF, FF)

AAP and SKW indicated support for NHTSA's efforts to rate lower attachments. AAP also mentioned a preference that agency require ''push-on'' connectors. SKW indicated their belief that the criteria might be too restrictive and prohibit future designs. JPMA opposes the agency's proposal to rate lower attachment style under the EOU rating program and recommend that we instead increase education efforts about the system. They commented that the removal of lower attachments from the vehicle is an ''interface issue between the CRS and the vehicle'' and that vehicle characteristics play a part in the operation as well. NHTSA agrees that the ease of attaching and removing lower attachments from vehicle anchors is partly dependent on the vehicle and, as JPMA suggests, some interface between the two. We do not believe that our criteria are too restrictive and feel they are sufficiently broad enough to capture current designs as well as allow for future designs. Similarly, the agency will continually update the criteria, as needed, to capture new designs or new information as it becomes available in the marketplace.

It has been NHTSA's experience, as well as Transport Canada's,[21] that there are EOU benefits specific to lower attachment type as well. CHOP indicated their support for any EOU feature that encourages the manufacturer to indicate lower anchor and tether orientation information on the attachments themselves. The agency agrees this would be useful and could be achieved by having common symbols. However, the agency could not develop objective criteria within the time period of the assessment to rate a feature of this type; as a result, the upgraded forms will assess this feature only to the extent that the agency proposed in the Notice.

i. Storage for the LATCH system when not in use? (RF, FF)

No specific comments were received. As a result, our proposed feature is being adopted as the final feature.

j. Indication on the child restraint for where to put the carrier handle? (RF) No specific comments were received. As a result, our proposed feature is being adopted as the final feature.

C. Rating System

SKW, IMMI and SRN/SBS–USA supported the agency's decision to present EOU ratings on five levels of evaluation rather than three.[22] Advocates believed that creating five rating levels, regardless of whether stars or an alternative icon is used, is ''counterproductive'' as ''the agency has already made a case for deleting the middle ''B'' category for certain * * * features to make the resulting ratings more separate and distinct.'' The agency would like to clarify that its primary intent in removing most of the ''B'' feature ratings was to strengthen the importance of certain individual features by rating on their presence (''A'') or their absence (''C''). This has the added benefit of increasing the robustness of the ratings and, as the Advocates stated, can make the ratings more separate and distinct. However, we believe that the overall scores will likely be more varied than they have been in previous years simply because of the program's revised and more comprehensive content. The agency does not feel that the decision to reduce some features'' criteria from three to two prohibits separating the ratings into five levels.

MDC proposed that the agency develop an alternative method of restraints that takes into account the higher costs associated with some features. The EOU ratings have no precedence for weighting results based on cost; as there is no direct correlation between price and rating we do not believe that lower cost seats are somehow prohibited from achieving top ratings. However, we will monitor the costs of child restraints and are interested in any information regarding whether the price of child restraints increase due to manufacturers'' placing more higher-cost features on the restraints to achieve a higher EOU rating and what that impact will be on consumers with lower economic means.

Advocates suggested that the agency ''grade on the curve,'' or essentially rank products against each other. We believe that the design of the EOU program and the rating of features provide a more meaningful way for consumers to compare child seats than a ranking system. A ranking system, as proposed by the Advocates, would imply a level of certainty that the agency does not believe exists for the ease of use program. As such, the agency does not see a need to incorporate this concept into the rating scheme.

SRN/SBS–USA suggested that the agency provide more information on its website about the features each child restraint has. They noted that this information could be used for comparison purposes across similar seats as well as provide a way for NHTSA to highlight features that may convey benefits in a crash. While NHTSA's EOU rating system is somewhat based on the presence of certain features, we also often assess the labeling, instructions, and ease of actually using such features. Merely highlighting the presence or absence of a feature without assessing its Ease of Use, we believe, would not be a robust enough criteria for most features. Similarly, it is not clear to the agency what ''crash'' features above those already required by the FMVSS No. 213 standard would warrant inclusion in the program. We are aware of several manufacturers beginning to market products as side impact tested but the

[20] JPMA noted that the ''indicator line'' style of recline feedback can be used regardless of the surface a vehicle is parked on, while feedback devices must be used on level ground.

[21] NHTSA–2007–26833–0024

[22] NHTSA–2006–25344–0019.1

agency has not fully evaluated these products to determine if they would indeed result in safety benefits in the real world. As such, it would be premature to further encourage these types of ''features'' until they can be assessed as to their actual benefit. As such, we will not be incorporating this concept into the presentation of EOU ratings. However, we do note that we are upgrading the presentation of the information on the EOU website and will complete that work later this year.

SRN/SBS–USA suggested that the agency consider ''failing'' child restraints that do not have certain styles of features. In addition, they suggested that ''extra points'' be awarded for the presence of certain other features. The agency believes that the structure of the current rating system incorporates to some extent both of these concepts. While we do not ''fail'' or award ''extra points'' to a restraint based on the presence or absence of feature, we do evaluate and weight the features based on objective criteria which do take into account the presence of a feature. As such, we do not believe that it is necessary to include additional ''points'' that would modify a child restraints score. It should also be noted that all of the features suggested by SRN/SBS–USA as items the agency should use for ''failing'' and awarding ''extra points'' are being incorporated into the upgraded rating system.

AAP and SKW indicated support for NHTSA's intention to use stars as ''they are highly recognizable and understandable.'' IMMI, MDC, Advocates, DJG, Graco and JPMA indicated concern over the agency's proposal to use a 5-star system to convey the child restraint ease of use ratings to consumers. These commenters indicated their belief that the use of stars to present EOU ratings could be misleading to consumers who may associate stars exclusively with NHTSA's vehicle crashworthiness ratings. The five commenters indicated that consumers would mistakenly believe they were child restraint safety ratings rather than an evaluation of how easy the child seat was to use. JPMA submitted a variety of alternative icons they believed would better serve to convey these ratings to the public. Advocates suggested that the agency maintain its current letter grading system for presenting the upgraded EOU ratings to consumers. They noted that the agency could add ''D'' and ''F'' to the previous ''A'', ''B'',''C'' letter grading scheme in its effort to divide the ratings into five levels. In addition, Advocates felt it would be beneficial to include an ''F'' criteria to rate the worst features. The agency cautions that this suggestion is somewhat arbitrary. The concepts contained in the features and their rating criteria are designed to encompass the entire spectrum of products in the market. In many cases it is difficult to develop more than three levels of objective criteria for many criteria, given current product designs. Similarly, we do not believe there are enough levels to include ''F'' criteria throughout the forms.

In addition, none of the commenters provided any evidence that consumers would make these purported assumptions about the use of stars, and subsequent consumer research conducted by the agency supports our proposal. In order to determine whether star ratings could be used to successfully present EOU child restraint ratings to the public, the agency conducted mall intercepts of consumers in two U.S. cities.[23] The data collected from this study, while not statistically projectable to the entire U.S. market, allowed the agency to gain valuable insight to consumer perspective. The study found that an overwhelming majority of respondents preferred stars (48%) or found them equally as effective (30%) as presenting the ratings in letter form. Many indicated their preference for the system as being, among other things, ''more familiar,'' ''visually easier to compare,'' and ''more user-friendly.'' In addition, only two respondents out of the two hundred participants surveyed felt the agency's use of stars for both vehicle crashworthiness ratings and child restraint ease of use ratings could be misconstrued. In light of this study, and lack of data to the contrary, the agency is going forward with its proposal to use a 5-star rating system to present EOU ratings to consumers.

Advocates also commented that the method used to calculate the ratings was ''elaborate and overly complicated'' and that the division of ''star scores'' is ''arbitrary.'' The agency would like to restate that no changes were made to the method used to calculate the weighted category or overall averages from the original EOU program, which was adopted from a similar program created by the Insurance Corporation of British Columbia (ICBC). In addition, the agency does not believe that the star rating divisions are arbitrary. Our reasoning for establishing both the category and overall star ratings was outlined extensively in the November 23, 2007 notice.[24] As such, we are implementing the star rating break points and calculation methodology as outlined in that document.

D. Vehicle Rating System

SKW, JPMA, and SRN/SBS–USA indicated support for NHTSA's efforts to develop a rating based on vehicle features that facilitate easier child restraint installation. The agency agrees and looks forward to working with JPMA, vehicle manufacturers, and others to develop this program.

E. Cost and Retail Concerns

SKW, MDC, JPMA, and Graco indicated their belief that there is a potential for features encouraged under the new rating system to add costs to child restraints. They also expressed concern about potentially low ratings under the upgraded system and how that would affect retail demands for only the highest rated child restraints. With decreasing demands for certain products, MDC, JPMA, and Graco also believe it will affect the ability for CRS manufacturers to offer some basic, cost-effective child restraints that offer the same dynamic protection as many of the higher-priced models. All indicated their belief that this could have negative consequences with respect to overall child passenger safety efforts if fewer consumers are able to afford restraints. In addition, they believed it is contrary to the agency's goal of protecting every child.

The agency is aware that some of the features included in the upgrade have the potential to add cost to child restraints. However, the agency believes there are a number of no- and low-cost solutions (further labeling and instruction manual improvements) that can be used in an effort to fulfill some of the upgraded criteria and improve product ratings. The agency received similar concerns about decreasing product demands after proposing the original EOU program as well, and its experience has not indicated a reduction in the number of products available to consumers. In fact, nearly each year the number of products available for evaluation by the agency increases.

AAP commented that the move to a star-based rating system allows the manufacturer further opportunity to promote products over the former letter-based ratings system, and the agency concurs with this. Given the results of recent consumer intercepts, we believe that the decision to use stars to relate EOU ratings offers manufacturers renewed marketing potential for their products to both consumers and retailers, especially in more competitive market sectors.

[23] See Docket NHTSA–2006–25344.

[24] NHTSA–2006–25344–0016.

F. Other

AAP suggested that the agency include criteria that would encourage manufacturers to design products that may ''be used for long periods in several modes of use.'' While the agency agrees that restraints designed to accommodate taller, older, and heavier children have obvious safety implications, we find it difficult to develop a case for including a feature of this type in an EOU rating.

AAP also urged the agency to increase its educational efforts surrounding the program, especially in light of the agency's proposal to move to a 5-star rating system. They noted that ''many families simply are not aware that the Ease of Use System exists, and so do not benefit from the information it provides.'' NHTSA is planning to increase its educational efforts with respect to the EOU program and believes that our proposed upgrades offer an opportunity to improve its popularity. We will continue working with organizations such as JPMA, AAP, and a variety of retailers in order to accomplish this. The agency's other efforts, such as our recent work to develop a LATCH educational message,[25] also serve as channels for increasing consumer awareness of a variety of child passenger safety issues.

SRN/SBS–USA suggested the agency also ''rate highly any product which recommends for use of tether above 40 lbs.'' While it is conceivable that there would be benefits for a child to use a top-tether above 40 lbs, even if a child restraint's tether attachment were to suggests its use over 40 lbs, the user would have to also consult his or her vehicle owner's manual to ascertain whether the vehicle tether anchor is rated higher than 40 lbs. Therefore, giving a CRS credit for a feature that might not provide any use to the consumer in his or her vehicle could be considered misleading. Similarly, a working group of CRS and vehicle manufacturers are looking at this and other structural features related to LATCH. We believe that this issue would be better addressed in the context of that work as opposed to the EOU rating program. As a result, the agency does not believe this is an appropriate feature to include in the upgraded rating system at this time.

SRN/SBS–USA suggested that while boosters are not required to come LATCH-equipped, the agency include a feature in its EOU ratings to evaluate those that allow for the use of this equipment with these restraints. Lower attachments and tethers can help to retain a booster in the vehicle if the restraint is unoccupied; SRN/SBS–USA also noted that this can help stabilize the restraint in the vehicle when children are seating themselves. The agency does not believe that we have enough information about this issue to include it in the upgraded EOU rating system. We believe that the encouragement of LATCH hardware on boosters warrant further analysis and consideration. Until it is explored further, especially to determine if there are any unintended consequences from using the LATCH system in this manner, the agency will not be incorporating this feature into the EOU ratings.

Graco suggested that the agency take into account the improved usability of child restraints that voluntarily provide bi-lingual (English/Spanish) product labels. They also noted that the upgraded rating system may force them to remove Spanish-language labels in order to meet the new requirements. At this time the agency will not examine labeling content presented in other languages. Although Spanish is the most common second language seen on child restraints, the agency comes across labels in other languages as well. The agency would like to clarify that while the content will not be evaluated at this time, as long as the graphics, coloring, and overall feel of the Spanish-language labeling is a ''mirror image'' of the English labels found on the opposite side, the child restraint will receive credit for related features. For example, the upgraded ratings contain a feature that encourages the belt path to be labeled on both sides of the restraint. One side of the restraint may contain Spanish text and the other may contain English text. As long as the graphics and coloring for the label are visually analogous, the child restraint would receive the highest rating for that feature. It has been the agency's experience that this is the approach CRS manufacturers normally take when labeling their products using two languages.

CHOP suggested that the agency seek to include a feature that encourages manufacturers to install dual adjustors on flexible lower attachment straps in order to reduce opportunities for misuse from loose installations. The agency explored opportunities to include this concept as a feature in the proposed ratings, but found it difficult to develop enough objective criteria to distinguish between current products on the market. The agency expects that the improved labeling criteria and the emphasis on improved conversion instructions between modes of use can help to alleviate this problem in the absence of an additional feature. CHOP also commented on their preference for rigid LATCH systems, and urged the agency to reconsider requiring these systems. NHTSA has not changed its position with regards to requiring these systems. However, we note that a number of upgraded features were included to continue providing incentive for manufacturers who wish to incorporate these systems in their products.

V. Conclusion

NHTSA has decided to move forward with the upgraded Ease of Use child restraint rating program as presented in this notice of final decision. The agency believes that improvements made to the program will not only recognize easier to install features, specifically for the LATCH hardware, but they will also provide motivation for manufacturers to continue to design child restraints with features that are intuitive and easier to use. The agency believes this approach provides incentives to manufacturers while at the same time providing consumers with useful information. In addition, this upgrade allows us to recognize design features and products that have entered the market since the program was developed. Furthermore, our changes to the numerical ranges that determine the ratings will make the highest scores harder to achieve, which we believe, will spur product improvements and innovations that will enhance ease of use and ultimately the safety of child passengers. In addition to making high ratings harder to achieve, the agency is also changing the way it conveys these ratings to the public. EOU ratings will now be presented to consumers using NHTSA's familiar star rating system, which contains five levels. The agency believes that the additional levels of differentiation will further aid consumers in their purchasing decisions and add to the robustness of the rating system.

We believe that this consumer information program must undergo the changes outlined in this document to continue encouraging child restraint manufacturers to develop and maintain features that make it easier for consumers to use and install child restraints. The agency believes that the presence of easier to use features on child restraints leads to an increase in their correct use, which thereby results in increased safety for child passengers. NHTSA believes that these changes should be implemented as soon as possible and as such, these program enhancements are proposed for inclusion in the 2008 ratings program.

BILLING CODE 4910–59–P

[25] NHTSA–2007–28934–0001.

Appendix A: Ease of Use Rating Forms

NHTSA Ease of Use Rating Form - 2008

Infant Only Restraints, Convertible RF Mode, or 3-in-1 RF Mode

Date of Evaluation: _____ Evaluated by: _____

Manufacturer: _____ Make & Model: _____

Model #: _____ Date of Manufacture: _____

Base Model # if Different: _____ Date of Manufacture on Base (if different): _____

Style: ☐ Infant Only (RF) ☐ Convertible (RF/FF) ☐ 3-in-1 (RF, FF, & Booster) ☐ Car Bed

CRS has separate base: ☐ Yes ☐ No

Harness Style: ☐ 5-point ☐ "V" or 3-pt. ☐ OH Shield

Seat Characteristics & Measurements

Appropriate child size range for this mode according to manual: **Date on manual:** _____

RF Size Ranges	Weight				Height			
	Minimum		Maximum		Minimum		Maximum	
	kg	lb	kg	lb	cm	in	cm	in

NHTSA Ease of Use Rating Form - 2008

Infant Only Restraints, Convertible RF Mode, or 3-in-1 RF Mode

Make & Model 0 Model # 0

Evaluation of Labels

	A	B	C	Notes
Clear indication of child's size range for this mode. Is there additional information on the CRS about how the child should fit in it?	Separate, clear, complete height and weight information directly next to the illustration. Additional size information included as a picture. ☐	Separate, clear, complete height and weight information directly next to the illustration. Additional size information included as short, simple text. ☐	Incomplete text as indicated, text independent of illustration, or no illustration, and/or no mention of additional sizing information. ☐	
All methods of installing the seat in this mode are clearly indicated, including with lower anchors, lap belt only, and lap/shoulder belt, with and without the base as necessary.	Illustrated clearly with CR in vehicle seat. No need to read text although illustrations should be labeled for each method of installation. ☐		Method missing, partially illustrated, or no illustrations at all. CRS may be shown without any vehicle seat at all. Must read text. ☐	
Does the CRS indicate the correct harness slot height for this mode? Is there additional information on the CRS about how the shoulder straps should fit for this mode?	Yes, there is a graphic or contrasting text indicating the correct harness slots to use for this mode. Additional harness adjustment information is conveyed using a picture. ☐	Yes, there is text indicating the correct harness slots to use for this mode but they may be the same color as the shell. Additional harness adjustment information is included but may be text only. ☐	No indication of correct slots to use for this mode (for applicable multi-mode CRS) and/or no mention of additional sizing information. ☐	
Vehicle belt & flexible lower anchor path labeling and routing.	Illustrated clearly with no need to read text in order to route seatbelts. Contrasting label is directly next to the corresponding belt path on both sides of CRS. ☐	Belt routing path label is only contrasting on one side but would otherwise fulfill "A" criteria. ☐	Belt routing label not next to corresponding path. Belt routing path is only labeled on one side. Routing requires reading text or is otherwise not obvious from illustration. May also be obscured by seat pad. ☐	
Shows how to prepare and use lower attachments.	Clear illustrations show how to route and attach lower anchors to vehicle for using the CRS in this mode. One or two words per idea are OK for clarification. ☐	Illustrations plus written instructions provided. Need to read text to perform entire operation. ☐	Text-heavy instructions only provided or no instructions at all provided. Partial instructions; some steps missing. ☐	
Durability of labels.	Sticky label(s) or other method of technology label not peeling. ☐		Sticky label(s) are already peeling when restraint removed from box. ☐	

NHTSA Ease of Use Rating Form - 2008

Infant Only Restraints, Convertible RF Mode, or 3-in-1 RF Mode

Make & Model 0 Model # 0

Evaluation of Instructions

	A	B	C	Notes
Is the owner's manual easy to find when the CRS is taken out of the box?	Attached to the child restraint in a clearly visible location. ☐		Attached to the child restraint in a hard-to-find location or not attached to the seat at all. ☐	
Evaluate the storage system for accessing the manual in this mode.	It is obvious and easy to use. The manual can be accessed when the CRS is installed in this mode of use. ☐	It is obvious and easy to use, but the manual cannot be accessed when the CRS is installed in this mode of use. ☐	The designated storage system isn't obvious or it is difficult to use regardless of mode of use. Can easily fall of off carrier if removed. ☐	
Clear indication of child's size range. Is there additional information on the CRS about how the child should fit?	Separate, clear, complete height and weight information directly next to the illustration. Additional size information included alongside a picture. ☐	Separate, clear, complete height and weight information directly next to the illustration. Additional size information included as short, simple text. ☐	Incomplete text as indicated, text independent of illustration, or no illustration, and/or no mention of additional sizing information. ☐	
All methods of installing the seat in this mode are clearly indicated, including with lower anchors, lap belt only, and lap/shoulder belt, with and without the base as necessary.	Illustrated clearly with CR in vehicle seat. No need to read text although illustrations should be labeled for each method of installation. ☐		Method missing, partially illustrated, or no illustrations at all. CRS may be shown without a vehicle seat. ☐	
Warning to avoid placing a rear-facing child restraint in front of an active airbag .	Separate from unrelated warnings and illustrated; has its own page or other very clear demarcation. Also remarks that the safest place for all children is in the rear. ☐	Illustrated but buried within other unrelated warnings, for example, in a bulleted list. Must still contain a warning that the safest place for children is in the rear AND specifically mention the dangers of RF CRS and airbags. ☐	Buried among other text, incomplete warning, or no warning at all. ☐	
Instructions for routing both lap belt and lap/shoulder belt for this mode, including details about different vehicle seatbelts and how this CRS should be installed with each of them.	Illustrated clearly No need to read text in order to route seatbelt; should be obvious from diagrams. Manual includes complete instructions for determining vehicle seatbelt type. ☐	Illustrated clearly. No need to read text in order to route seatbelt; should be obvious from diagrams. Instructions for determining vehicle seatbelt type are present but may be incomplete. ☐	Unclear instructions that require reading text. No mention of how to use vehicle seatbelts correctly. ☐	
Shows how to prepare and use lower attachments.	Clear illustrations show how to route and attach lower anchors to vehicle for using the CRS in this mode. One or two words per idea are OK for clarification. ☐	Illustrations plus written instructions provided. Need to read text to perform entire operation. ☐	Text-heavy instructions only provided or no instructions at all provided. Partial instructions; some step missing. ☐	
For this mode, information in written instructions and on labels match.	Yes. ☐		No. Please describe the conflict under notes. ☐	

NHTSA Ease of Use Rating Form - 2008

Infant Only Restraints, Convertible RF Mode, or 3-in-1 RF Mode

Make & Model 0 Model # 0

Securing the Child

	A	B	C	Notes
All functional parts (i.e., required for correct use as per instructions) including seat pad or cover attached and ready to use, harness slots and crotch strap in their lowest settings.	Yes. ☐		No, not ready to use regardless of how difficult the assembly may be. May direct user to manual or is otherwise difficult. Tools may be required. Please describe under notes. ☐	
Does the harness clip require threading to secure properly? Is it labeled to indicate its proper positioning on the child?	No, and harness clip is labeled. ☐	No, but harness clip is not labeled. ☐	Yes. ☐	
Evaluate the ease of inserting the shoulder portions of the harness buckle for this seat.	Each upper portion of the shoulder harness may be inserted separately. ☐	"Puzzle" buckle with an intermediate method of holding the shoulder portions together. ☐	"Puzzle" buckle with no intermediate method of holding the shoulder portions together ☐	
Access to & use of harness adjustment system.	Can access harness system when installed, one hand to tighten (one pull system). Possible 2 hands to loosen (i.e., one to depress button and one to loosen the harness. ☐		Does not meet "A" criteria. Please describe under notes. ☐	
Evaluate the number and adjustability of the harness slots in the shell and the pad.	The number of slots in the pad & shell match, and there are at least 3 OR the system is adjustable to at least 3 heights. ☐		Does not meet "A" criteria. Please describe under notes. ☐	
Visibility & alignment of harness slots for systems that must be re-threaded.	Can see through all harness slots. All slots in pad are aligned with slots in shell. ☐	Cannot see through all harness slots because they are small or are misaligned with the shell. ☐	Cannot see all harness slots because there is something in way for this mode, e.g. an insert, a head hugger, or body pillow. ☐	☐ n/a, system does not require re-thread
Ease of adjusting the harness for child's growth	No need to rethread system. No mandatory pieces exist that may become loose when adjusting system. ☐	No need to rethread system, but may be otherwise difficult to adjust. ☐	Harness must be rethread to adjust. Loose mandatory pieces may be present. Could misroute or incorrectly resecure harness. ☐	
Ease of conversion **to** RF from all other possible modes of use.	Simple operation with only a single or dual action. Illustrations and instructions on seat showing mode change. ☐	Simple operation but multiple actions are required. Illustrations may be missing from the label, requiring the user to read the manual ☐	Operation is difficult, requiring many complicated steps that must be followed in the manual. ☐	☐ n/a, single mode CRS
Ease of re-assembly if pad/cover removed for cleaning.	No loose parts. Easy to remove and reattach the padding. No rethreading required. ☐	Harness system may need to be rethreaded to re-assemble, but no loose parts exist. ☐	Loose parts may exist, including the harness system. Harness system may need to be rethreaded to re-assemble. May even need hand tool(s). ☐	
Ease of adjusting/removing shield.	Clear illustration on CRS, simple action, shield marked. ☐	Need to read text, simple action, shield not marked. ☐	Other tool(s) required. ☐	☐ n/a, no shield ☐ n/a, shield not adjustable

NHTSA Ease of Use Rating Form - 2008

Infant Only Restraints, Convertible RF Mode, or 3-in-1 RF Mode

Make & Model 0 Model # 0

Vehicle Installation Features

		A	B	C	Notes
Ease of routing vehicle belt or LATCH lower attachment straps (if flexible) for installation in this mode, with and without base if separate.		A 95th percentile male hand can route the seatbelt easily and comfortably. The padding does not need to be moved in order to route the belt. ☐		The belt path does not accommodate a 95th percentile male hand, or has to be routed under the CRS padding for one or more modes of RF installation. ☐	
Can vehicle belt or lower LATCH straps (if flexible) interfere with harness (including crotch strap) or be routed incorrectly with respect to other seat elements such as padding?		No contact or interference possible. ☐		Possible contact or misrouting. Please describe this potential under notes. ☐	
Ease of attaching/removing infant seat from base.		Simple to attach, difficult to mistakenly secure carrier to base. One step release mechanism easy to reach. ☐		Difficult to attach carrier securely to base. Easy to mistakenly secure carrier to base. Release mechanism may be difficult to reach. Carrier has the potential to appear correctly installed when it is not. ☐	☐ n/a, no separate base
Ease of use of any RF belt positioning feature on CRS such as a lock-off.		Simple to use with instruction on CRS. ☐	Simple to use but must refer to manual. ☐	Multiple steps, confusing to use even with manual. ☐	☐ n/a, no belt positioning feature
Evaluate the seat's angle feedback device and the recline capabilities of the base (if separate).	***Convertible, 3-in-1***	Obvious, separate recline device. Adjustable to at least three levels of recline for this mode. ☐	Indication on a label or text in the same color as the CRS shell used as the recline device. Adjustable to at least three levels of recline for this mode. ☐	No feedback device on CRS, or does not have three levels of recline for this mode. ☐	☐ n/a, has separate base
	Carrier with separate base	Obvious, separate recline device (may only be on the carrier since it is more critical). Base is adjustable so that it allows for at least three levels of recline for this mode. ☐	Base is adjustable so that it allows for at least three levels of recline for this mode. However, does not meet "A" criteria for separate recline device. ☐	Base does not have three levels of recline for this mode. ☐	☐ n/a, no separate base
Do the lower anchors require twisting to remove from the vehicle?		No, system fully retracts from vehicle anchors with release mechanism. ☐	No twisting required but secondary action required to remove lower anchor from seat bight. ☐	Yes, user must twist lower anchors to remove from vehicle. ☐	☐ n/a, no lower anchors
Evaluate the storage system for the lower anchors when not in use.		Simple, obvious, dedicated, labeled storage system Or, lower anchors that completely retract when not in use. ☐	Storage system exists but may easily overlooked. ☐	No separate storage system exists, or user is directed to hook lower anchors together when not in use. ☐	☐ n/a, no lower anchors
Is there an indication on the carrier itself indicating where to put the handle when installed in vehicle?		Yes. ☐		No. ☐	☐ n/a, no separate carrier

NHTSA Ease of Use Rating Form - 2008

Forward Facing Only, Convertible FF Mode, Combination FF Mode, or 3-in-1 FF Mode

Date of Evaluation: _____ Evaluated by: _____

Manufacturer _____ Make & Model: _____

Model #: _____ Date of Manufacture: _____

Style: ☐ FF only ☐ Convertible (RF/FF) ☐ Combination (FF/Booster) ☐ 3-in-1 (RF, FF, & Booster) ☐ FF Vest ☐ Other: _____

Harness: ☐ 5-point ☐ OH Shield ☐ Other: _____

Seat Characteristics & Measurements

Appropriate child size range for this mode according to manual: **Date on manual:** _____

FF Size Ranges	Weight				Height			
	Minimum		Maximum		Minimum		Maximum	
	kg	lb	kg	lb	cm	in	cm	in

NHTSA Ease of Use Rating Form - 2008

Forward Facing Only, Convertible FF Mode, Combination FF Mode, or 3-in-1 FF Mode

Make & Model 0 Seat # (on tag) 0

Evaluation of Labels

	A	B	C	Notes
Clear indication of child's size range for this mode. Is there additional information on the CRS about how the child should fit in it?	Separate, clear, complete height and weight information directly next to the illustration. Additional size information included as a picture. ☐	Separate, clear, complete height and weight information directly next to the illustration. Additional size information included as short, simple text. ☐	Incomplete text as indicated, text independent of illustration, or no illustration, and/or no mention of additional sizing information. ☐	
All methods of installing the seat in this mode are clearly indicated, including with lower anchors, lap belt only, and lap/shoulder belt.	Illustrated clearly with CRS in vehicle seat. Illustrations should be labeled for each method of installation, must include label on each mode that indicates tether should be used. ☐		Method missing, partially illustrated, or no illustrations at all. CRS may be shown without a vehicle seat. Illustrations may not be completely labeled for each method of installation, for example, may not be labeled indicating that tether should be in use for all FF installations. ☐	
Does the CRS indicate the correct harness slot height for this mode? Is there additional information on the CRS about how the shoulder straps should fit for this mode?	Yes, there is a graphic or contrasting text indicating the correct harness slots to use for this mode. Additional harness adjustment information is conveyed using a picture. ☐	Yes, there is text indicating the correct harness slots to use for this mode but they may be the same color as the shell. Additional harness adjustment information is included but may be text only. ☐	No indication of correct slots to use for this mode (for applicable multi-mode CRS) and/or no mention of additional sizing information. ☐	
Vehicle belt & flexible lower anchor path labeling and routing.	Illustrated clearly with no need to read text in order to route seatbelts. Label is directly next to the corresponding belt path on both sides of CRS. ☐	Belt routing path label is only contrasting on one side but would otherwise fulfill "A" criteria. ☐	Belt routing label not next to corresponding path. Belt routing path is only labeled on one side. Routing requires reading text or is otherwise not obvious from illustration. May also be obscured by seat pad. ☐	
Shows how to prepare and use lower attachments.	Clear illustrations show how to route and attach lower anchors to vehicle for using the CRS in this mode. One or two words per idea are OK for clarification. ☐	Illustrations plus written instructions provided. Need to read text. ☐	Text-heavy instructions only provided or no instructions at all provided. Partial instructions; some step missing. ☐	
Shows how to prepare and use the tether.	Clear illustrations show how to route and attach tether to vehicle for using the CRS in this mode. One or two words per idea are OK for clarification. ☐	Illustrations plus written instructions provided. However, need to read text in order to know to complete all steps. ☐	Text-heavy instructions only provided or no instructions at all provided. Partial instructions; some step missing. ☐	
Durability of labels.	Sticky label(s) or other method of technology label not peeling. ☐		Sticky label(s) are already peeling when restraint removed from box. ☐	☐ n/a not youngest mode for this CRS

NHTSA Ease of Use Rating Form - 2008

Forward Facing Only, Convertible FF Mode, Combination FF Mode, or 3-in-1 FF Mode

Make & Model 0 Seat # (on tag) 0

Evaluation of Instructions

	A	B	C	Notes
Is the owner's manual easy to find when the CRS is taken out of the box?	Attached to the child restraint in a clearly visible location. ☐		Attached to the child restraint in a hard-to-find location or not attached to the seat at all. ☐	☐ n/a not youngest mode for this CRS
Evaluate the storage system for accessing the manual in this mode.	It is easy to use and it is difficult for the manual to fall out. The manual can be accessed when the CRS is installed in this mode of use. ☐	It is easy to use, but the manual cannot be accessed when the CRS is installed in this mode of use. ☐	The designated storage system is difficult to use or cannot be accessed regardless of mode of use. ☐	
Clear indication of child's size range. Is there additional information in the instructions about how the child should fit?	Separate, clear, complete height and weight information directly next to the illustration. Additional size information included alongside a picture. ☐	Separate, clear, complete height and weight information directly next to the illustration. Additional size information included as short, simple text. ☐	Incomplete text as indicated, text independent of illustration, or no illustration, and/or no mention of additional sizing information. ☐	
All methods of installing the seat in this mode are clearly indicated, including with lower anchors, lap belt only, and lap/shoulder belt, with reference to using the tether with each one.	Illustrated clearly with CRS in vehicle seat. No need to read text although illustrations should be labeled for each method of installation. ☐		Method missing, partially illustrated, or no illustrations at all. CRS may be shown without a vehicle seat, or tether may not be labeled. ☐	
Indication that the safest place in a vehicle for children is the rear seat.	Separate from unrelated warnings and illustrated; has its own page or other very clear demarcation. ☐	Buried within other warnings, for example, in a bulleted list. ☐	Buried among other text or no warning at all. ☐	
Instructions for routing both lap belt and lap/shoulder belt for this mode, including details about different vehicle seatbelts and how this CRS should be installed with each of them.	Illustrated clearly No need to read text in order to route seatbelt, should be obvious from diagrams. Manual includes complete instructions for determining vehicle seatbelt type. ☐	Illustrated clearly. No need to read text in order to route seatbelt; should be obvious from diagrams. Instructions for determining vehicle seatbelt type are present but may be incomplete. ☐	Unclear instructions that require reading text. No mention of how to use vehicle seatbelts correctly. ☐	
Shows how to prepare and use lower attachments & tether.	Clear illustrations show how to route and attach lower anchors and tether to vehicle for using the CRS in this mode. One or two words per idea are OK for clarification. ☐	Illustrations plus written instructions provided. Need to read text to perform entire operation ☐	Text-heavy instructions only provided or no instructions at all provided. Partial instructions; some step missing. ☐	
For this mode, information in written instructions and on labels match.	Yes. ☐		No. Please describe the conflict under notes. ☐	

NHTSA Ease of Use Rating Form - 2008

Forward Facing Only, Convertible FF Mode, Combination FF Mode, or 3-in-1 FF Mode

Make & Model 0 Seat # (on tag) 0

Securing the Child

	A	B	C	Notes
All functional parts (i.e., required for correct use as per instructions) including seat pad or cover attached and ready to use, harness slots and crotch strap in their lowest settings Tether must also come attached to CRS	Yes.		No, not ready to use regardless of how simple the assembly may be. May direct user to manual or is otherwise difficult Tools may be required Please describe under notes.	n/a not youngest mode for this CRS
Does the harness clip require threading to secure properly? Is it labeled to indicate its proper positioning on the child?	No, and harness clip is labeled	No, but harness clip is not labeled.	Yes.	
Evaluate the ease of inserting the shoulder portions of the harness buckle for this seat.	Each upper portion of the shoulder harness may be inserted separately.	"Puzzle" buckle with an intermediate method of holding the shoulder portions together	"Puzzle" buckle with no intermediate method of holding the shoulder portions together	
Access to & use of harness adjustment system.	Can access harness system when installed, one hand to tighten (one pull system). Possible 2 hands to loosen (i.e , one to depress button and one to loosen the harness.		Cannot reach the adjustment mechanism in this mode when correctly installed and/or other method of harness adjustment such as those that require two hands, re-threading, or removal of CRS from vehicle	
Evaluate the number and adjustability of the harness slots in the shell and the pad	The number of slots in the pad & shell match, and there are at least 3 OR the system is adjustable to at least 3 heights.		Does not meet "A" criteria.	
Visibility & alignment of harness slots for systems that must be re-threaded.	Can see through all harness slots. All slots in pad are aligned with slots in shell.	Cannot see through all harness slots because they are small or are misaligned with the shell	Cannot see all harness slots because there is something in way for this mode, e.g. an insert, a head hugger, or body pillow.	n/a, system does not require re-thread
Ease of adjusting the harness for child's growth.	No need to rethread system. Simple, obvious operation of the harness adjustment system No mandatory pieces exist that may become loose when adjusting system.	No need to rethread system, but may be otherwise difficult to adjust.	Harness must be rethread to adjust. Loose mandatory pieces may be present. Could misroute or incorrectly resecure harness, even for a no-thread system	
Ease of conversion **to** FF from all other possible modes of use	Simple operation with only a single or dual action Illustrations on seat showing mode change.	Simple operation but multiple actions are required Illustrations may be missing from the label, requiring the user to read text which must be present on CRS	Operation is difficult, requiring many complicated steps. The instructions may be confusing, or missing altogether	n/a, single mode CRS
Ease of re-assembly if pad/cover removed for cleaning.	No loose parts Easy to remove and reattach the padding No rethreading required	Harness system may need to be rethreaded to re-assemble, but it is a very simple system. No loose parts exist	Loose parts may exist, including the harness system Harness system may need to be rethreaded to re-assemble May even need hand tool(s)	
Ease of adjusting/removing shield	Clear illustration on CRS, simple action, shield marked.	Need to read text, simple action, shield not marked	Other tool(s) required.	n/a, no shield n/a, shield not adjustable

NHTSA Ease of Use Rating Form - 2008

Forward Facing Only, Convertible FF Mode, Combination FF Mode, or 3-in-1 FF Mode

Make & Model 0 Seat # (on tag) 0

Vehicle Installation Features

	A	B	C	Notes
Ease of routing vehicle belt or LATCH lower attachment straps (if flexible) for installation in this mode.	A 95th percentile male hand can route the seatbelt easily and comfortably. The padding does NOT need to be moved in order to route the belt. ☐		The belt path does not accommodate a 95th percentile male hand, or has to be routed under (not past, which is OK) the CRS padding for FF installation. ☐	
Can vehicle belt or lower LATCH straps (if flexible) interfere with harness (including crotch strap) if routed correctly?	No contact or interference possible. ☐		Possible contact or misrouting. Please describe this potential under notes. ☐	
Ease of use of any FF belt positioning feature on CRS such as a lock-off.	Simple to use with instruction on CRS. ☐	Simple to use but must refer to manual. ☐	Multiple steps, confusing to use even with manual. ☐	☐ n/a, no belt positioning feature
Evaluate the tether on this CRS.	Only one hand required to tighten and release the tether. ☐		Does not meet "A" criteria. ☐	☐ no tether required
Do the lower anchors require twisting to remove from the vehicle?	No, system fully retracts from vehicle anchors with release mechanism. ☐	No twisting required but secondary action required to remove lower anchor from seat bight. ☐	Yes, user must twist lower anchors to remove from vehicle. ☐	
Evaluate the storage system for the lower anchors & tether when not in use.	Simple, obvious, dedicated, labeled storage system. Or, lower anchors or a tether that completely retracts when not in use. ☐	Storage system exists but may be easily overlooked. ☐	No separate storage mentioned or user is directed to hook lower anchors together or with tether when not in use. ☐	

NHTSA Ease of Use Rating Form - 2008

Booster, Combination Seat in BPB Mode, or 3-in-1 in BPB Mode

Date of Evaluation: _____ Evaluated by: _____

Manufacturer: ▼ Make & Model: _____

Model #: _____ Date of Manufacture: _____

Style: ☐ Low-Back ☐ High-Back ☐ High-Back/Low-Back ☐ Combination (FF/Booster) ☐ 3-in-1 (RF, FF, & Booster) ☐ Other _____

Seat Characteristics & Measurements

Child size range given in owner's manual: **Date on manual:** _____

Booster Size Ranges	Weight				Height			
	Minimum		Maximum		Minimum		Maximum	
	kg	lb	kg	lb	cm	in	cm	in

NHTSA Ease of Use Rating Form - 2008

Booster, Combination Seat in BPB Mode, or 3-in-1 in BPB Mode

Make & Model 0 Model # 0

Evaluation of Labels

	A	B	C	Notes
Clear indication of child's size range for this mode. Is there additional information on the CRS about how the child should fit in it?	Separate, clear, complete height and weight information directly next to the illustration. Additional size information included as a picture. ☐	Separate, clear, complete height and weight information directly next to the illustration. Additional size information included as short, simple text. ☐	Incomplete text as indicated, text independent of illustration, or no illustration, and/or no mention of additional sizing information. ☐	
All method(s) of installing this CRS correctly are indicated (high back and/or low back).	Illustrated clearly with CR in vehicle seat. No need to read text although illustrations should be labeled for each method of installation. ☐		No illustrations at all or a method of installation is missing, or may be difficult to tell one method of installation from another. ☐	
Vehicle belt use & vehicle belt path labeling.	Illustrated clearly with no need to read text in order to route seatbelts. Label is directly next to the corresponding belt path or positioning device on both sides of CRS. ☐	Belt routing path label is only contrasting on one side but would otherwise fulfill "A" criteria. ☐	Belt routing label not next to corresponding path. Belt routing path or device is only labeled on one side. Routing requires reading text or is otherwise not obvious from illustration. May also be obscured by seat pad. ☐	
Label warning against using a lap belt only.	Illustration included warning user against using the CRS with the lap belt only for this mode. ☐	Text warning the user not to use the lap belt only in this mode. ☐	No written or illustrated warning. ☐	☐ n/a, may be used with lap belt
Durability of labels.	Sticky label(s) or other method of technology label not peeling. ☐		Sticky label(s) are already peeling when restraint removed from box. ☐	☐ n/a not youngest mode for this CRS

NHTSA Ease of Use Rating Form - 2008

Booster, Combination Seat in BPB Mode, or 3-in-1 in BPB Mode

Make & Model 0 Model # 0

Evaluation of Instructions

	A	B	C	Notes
Is the owner's manual easy to find when the CRS is taken out of the box?	Attached to the child restraint in a clearly visible location. Finding it in a very obvious storage system is acceptable. ☐		Attached to the child restraint in a hard-to-find location or not attached to the seat at all This includes when it is found in an obscured storage system. ☐	☐ n/a not youngest mode for this CRS
Evaluate the storage system for accessing the manual in this mode.	It is obvious and easy to use. The manual can be accessed when the CRS is installed in this mode of use. ☐	It is obvious and easy to use, but the manual cannot be accessed when the CRS is installed in this mode of use. ☐	The designated storage system isn't obvious or it is difficult to use regardless of mode of use. ☐	
Clear indication of child's size range. Is there additional information somewhere in the manual about how the child should fit?	Separate, clear, complete height and weight information directly next to the illustration. Additional size information included alongside a picture. ☐	Separate, clear, complete height and weight information directly next to the illustration. Additional size information included as short, simple text. ☐	Incomplete text as indicated, text independent of illustration, or no illustration, and/or no mention of additional sizing information. ☐	
All methods of installing this seat with a lap/shoulder belt including low back and high back modes if they exist.	Illustrated clearly with CR in vehicle seat. No need to read text although illustrations should be labeled for each method of installation. ☐		No illustration, text only. May be illustrated, but not all modes shown. ☐	
Indication that the safest place in a vehicle for children is the rear seat.	Separate from unrelated warnings and illustrated; has its own page or other very clear demarcation. ☐	Buried within other warnings, for example, in a bulleted list. ☐	Buried among other text or no warning at all. ☐	
Instructions for routing lap/shoulder belt alongside a picture warning against using a lap belt only.	Illustrated clearly with CR on vehicle seat. No need to read text in order to route seatbelt. Diagram warning against using a lap belt only is included in this section of the manual unless seat may be used correctly with one. ☐	Illustrated, outlined, but may not be pictured on a vehicle seat. Text warning not to use with a lap belt (only if it is a misuse) included in this section of the manual. ☐	Unclear instructions that require reading text. Fails to caution against the use of lap belt only in this section of the manual (if this is a misuse). ☐	
For this mode, information in written instructions and on labels match.	Yes. ☐		No. Please describe the conflict under notes. ☐	

NHTSA Ease of Use Rating Form - 2008

Booster, Combination Seat in BPB Mode, or 3-in-1 in BPB Mode

Make & Model 0 Model # 0

Securing the Child

	A	B	C	Notes
All functional parts (i.e., required for correct use as per instructions) including seat pad or cover attached and ready to use, harness slots and crotch strap in their lowest settings.	Yes. ☐		No, not ready to use regardless of how difficult the assembly may be. May direct user to manual or is otherwise difficult. Tools may be required. Please describe under notes. ☐	☐ n/a not youngest mode for this CRS
Ease of conversion from any other mode of use **to** a booster.	Simple operation with only a single or dual action. Illustrations on seat showing mode change. ☐	Simple operation but multiple actions are required. Illustrations may be missing from the label, requiring the user to read text which must be present on CRS. ☐	Operation is difficult, requiring many complicated steps. The instructions may be confusing, or missing altogether. ☐	☐ n/a, booster only
Ease of conversion **from** high back **to** low back booster.	Simple action. Illustration provided on seat showing mode change. ☐	Simple action but no specific illustration is provided on seat. Text may be present. ☐	Action difficult or need additional instructions not found on CRS labels. Tools may be required. ☐	☐ n/a, combination or 3-in-1 ☐ n/a, booster may not be converted
Ease of re-assembly if pad/cover removed for cleaning.	No loose parts. Easy to remove and reattach the padding. ☐		Loose parts. May even need hand tool(s). ☐	

Vehicle Installation Features

	A	B	C	Notes
Ease of use of any separate shoulder belt positioning or guide hardware on CRS	Very simple action requiring one hand to use. ☐	Two hands to use but action is simple. ☐	Multiple steps to position belt, most likely need to read instructions for clarification. ☐	☐ n/a, no separate device
Does belt-positioning guide or device allow slack to occur? Does it also prevent the shoulder portion from slipping accidentally?	No. The shoulder belt can move freely through its positioning device. In addition, the shoulder belt cannot slip out of the device accidentally. ☐	No. The shoulder belt can move freely through its positioning device. However, the shoulder belt could slip out of the device accidentally. ☐	Yes. The shoulder belt movement is restricted by the belt-positioning device. ☐	☐ n/a, no separate device

Appendix B: Ease of Use Score Forms

	RF MODE - MAKE AND MODEL		MODEL #	Date of Manufacture
	0		0	00/00/00
	Feature			
Value	**Evaluation of Labels**	**Score**	**Weighted Score**	**Weighted Ave.**
2	Clear indication of child's size range.	0	0	0
2	Are all modes of use clearly indicated?	0	0	0
2	Are the correct harness slots for this mode indicated?	0	0	0
2	Seat belt & lower attachment routing path clarity.	0	0	0
2	Shows how to prepare & use lower attachments.	0	0	0
1	Durability of labels. (n/a if not youngest mode)	0	0	0
		Total	**0**	**0**
		Weighted Ave	**0.00**	
		Star Rating	**n/a**	
	Evaluation of Instructions			
2	Owner's manual easy to find?	0	0	0
1	Evaluate the access to the manual's storage system in this mode.	0	0	0
1	Clear indication of child's size range.	0	0	0
1	Are all modes of use clearly indicated?	0	0	0
1	Rear-facing airbag warning?	0	0	0
1	Instructions for routing seatbelt.	0	0	0
1	Shows how to prepare & use lower attachments.	0	0	0
2	Information in written instructions and on labels match?	0	0	0
		Total	**0**	**0**
		Weighted Ave	**0.00**	
		Star Rating	**n/a**	
	Securing the Child			
3	Is the seat assembled & ready to use?	0	0	0
3	Does harness clip require threading? Is it labelled?	0	0	0
2	Evaluate the harness buckle style.	0	0	0
3	Access to and use of harness adjustment system.	0	0	0
1	Number and adjustability of harness slots in shell and pad.	0	0	0
1	Visibility & alignment of harness slots.	0	0	0
3	Ease of adjusting the harness for child's growth.	0	0	0
3	Ease of conversion to RF from all other possible modes of use.	0	0	0
2	Ease of reassembly after cleaning.	0	0	0
2	Ease of adjusting/removing shield.	0	0	0
		Total	**0**	**0**
		Weighted Ave	**0.00**	
		Star Rating	**n/a**	
	Vehicle Installation Features			
3	Ease of routing vehicle belt or flexible lower attachments in this mode.	0	0	0
3	Can vehicle belt or lower attachments interfere with harness?	0	0	0
3	Ease of attaching/removing infant seat from base.	0	0	0
3	Ease of use of any belt positioning features.	0	0	0
	Evaluate seat's angle feedback device and recline capabilities.			
2	CRS only	0	0	0
2	Separate carrier and base	0	0	0
2	Do the lower attachments require twisting to remove?	0	0	0
2	Storage system for the lower attachments when not in use?	0	0	0
2	Handle placement instructions for the carrier?	0	0	0
		Total	**0**	**0**
		Weighted Ave	**0.00**	
		Star Rating	**n/a**	
		Total	**0**	**0**
		Weighted Ave	**0.00**	
	Overall	**Star Rating**	**n/a**	

	FF MODE - MAKE AND MODEL		**MODEL #**	**Date of Manufacture**
	0		0	00/00/00
	Feature			
Value	**Evaluation of Labels**	**Score**	**Weighted Score**	**Weighted Ave.**
2	Is there a clear indication of proper child size?	0	0	0
2	Are all modes of use clearly indicated?	0	0	0
2	Are the correct harness slots for this mode indicated?	0	0	0
2	Seat belt & lower attachment routing path clarity.	0	0	0
2	Shows how to prepare & use lower attachments.	0	0	0
2	Shows how to prepare & use tether.	0	0	0
1	Durability of labels. (n/a if not youngest mode)	0	0	0
		Total	**0**	**0**
		Weighted Ave	**0.00**	
		Star Rating	**n/a**	
	Evaluation of Instructions			
2	Owner's manual easy to find? (n/a if not youngest mode)	0	0	0
1	Evaluate the access to the manual's storage system in this mode.	0	0	0
1	Is there a clear indication of proper child size?	0	0	0
1	Are all modes of use clearly indicated?	0	0	0
1	Rear seat warning in written instructions.	0	0	0
1	Instructions for routing seatbelt.	0	0	0
1	Shows how to prepare & use lower attachments & tether.	0	0	0
2	Information in written instructions and on labels match?	0	0	0
		Total	**0**	**0**
		Weighted Ave	**0.00**	
		Star Rating	**n/a**	
	Securing the Child			
3	Is the seat assembled & ready to use?	0	0	0
3	Does harness clip require threading? Is it labeled?	0	0	0
2	Evaluate the harness buckle style.	0	0	0
3	Access to and use of harness adjustment system.	0	0	0
1	Number and adjustability of harness slots in shell and pad.	0	0	0
1	Visibility & alignment of harness slots.	0	0	0
3	Ease of adjusting the harness for child's growth.	0	0	0
3	Ease of conversion to FF from all other possible modes of use.	0	0	0
2	Ease of reassembly after cleaning.	0	0	0
2	Ease of adjusting/removing shield.	0	0	0
		Total	**0**	**0**
		Weighted Ave	**0.00**	
		Star Rating	**n/a**	
	Installation in vehicle			
3	Ease of routing vehicle belt and flexible lower attachments in this mode.	0	0	0
3	Can vehicle belt or lower attachments interfere with harness?	0	0	0
3	Ease of use of any belt positioning features.	0	0	0
3	Evaluate the tether adjustment.	0	0	0
2	Do the lower attachments require twisting to remove?	0	0	0
2	Storage system for the lower attachments & tether when not in use?	0	0	0
		Total	**0**	**0**
		Weighted Ave	**0.00**	
		Star Rating	**n/a**	
		Total	**0**	**0**
		Weighted Ave	**0.00**	
	Overall	**Star Rating**	**n/a**	

	BOOSTER MODE - MAKE AND MODEL		MODEL #	Date of Manufacture
	0		0	00/00/00
	Feature			
Value	**Evaluation of Labels**	**Score**	**Weighted Score**	**Weighted Ave.**
2	Is there a clear indication of proper child size?	0	0	0
2	Are all modes of use clearly indicated?	0	0	0
2	Seat belt use & routing path clarity.	0	0	0
2	Label warning against using a lap belt only.	0	0	0
1	Durability of labels. (n/a if not youngest mode)	0	0	0
		Total	**0**	**0**
		Weighted Ave	**0.00**	
		Star Rating	**n/a**	
	Evaluation of Instructions			
2	Owner's manual easy to find? (n/a if not youngest mode)	0	0	0
1	Evaluate the access to the manual's storage system in this mode.	0	0	0
1	Is there a clear indication of proper child size?	0	0	0
1	Are all modes of use clearly indicated?	0	0	0
1	Rear seat warning in written instructions.	0	0	0
1	Instructions for routing seatbelt.	0	0	0
2	Information in written instructions and on labels match?	0	0	0
		Total	**0**	**0**
		Weighted Ave	**0.00**	
		Star Rating	**n/a**	
	Securing the Child			
3	Is the seat assembled & ready to use? (n/a if not youngest mode)	0	0	0
3	Ease of conversion to booster from another mode.	0	0	0
2	Ease of conversion from high back to low back booster.	0	0	0
2	Ease of reassembly after cleaning.	0	0	0
		Total	**0**	**0**
		Weighted Ave	**0.00**	
		Star Rating	**n/a**	
	Installation in Vehicle			
3	Ease of use of any belt positioning features.	0	0	0
3	Does the belt positioning device allow slack? Can the belt slip?	0	0	0
		Total	**0**	**0**
		Weighted Ave	**0.00**	
		Star Rating	**n/a**	
		Total	**0**	**0**
		Weighted Ave	**0.00**	
	Overall	**Star Rating**	**n/a**	

Appendix C : Ease of Use Star Rating System

Figure 1
Sample graphic for a "1 star" rating (Result < 1.70)

Figure 2
Sample graphic for a "2 star" rating (1.70 ≤ Result < 2.00)

Figure 3
Sample graphic for a "3 star" rating (2.00 ≤ Result < 2.30)

Figure 4
Sample graphic for a "4 star" rating (2.30 ≤ Result < 2.60)

Figure 5
Sample graphic for a "5 star" rating (Result ≥ 2.60)

Issued on: January 28, 2008.

Nicole R. Nason,

Administrator.

[FR Doc. 08–451 Filed 1–30–08; 10:30 am]

BILLING CODE 4910–59–C

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–6 (Sub-No. 462X)]

BNSF Railway Company—Discontinuance of Trackage Rights Exemption—in Cook County, IL

On January 14, 2008, BNSF Railway Company (BNSF) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to discontinue overhead trackage rights over a 17.8-mile line of railroad owned by Illinois Central Railroad Company, between milepost 1.7 at Chicago, and milepost 19.5 at Harvey, in Cook County, IL.[1] The line traverses U.S. Postal Service Zip Codes 60426, 60605, 60609, 60615, 60616, 60620, 60621, 60643, and 60653.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by May 2, 2008.

Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate. Similarly, no environmental or historic documentation is required under 49 CFR 1105.6(c)(2) and 1105.8(b).

Any offer of financial assistance (OFA) for subsidy under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by the filing fee, which is currently set at $1,300. *See* 49 CFR 1002.2(f)(25).

All filings in response to this notice must refer to STB Docket No. AB–6 (Sub-No. 462X) and must be sent to: (1) Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001; and (2) Karl Morell, 1455 F Street, NW., Suite 225, Washington, DC 20005. Replies to the petition are due on or before February 21, 2008.

Persons seeking further information concerning discontinuance procedures may contact the Board's Office of Congressional and Public Services at (202) 245–0230 or refer to the full abandonment and discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: January 23, 2008.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. E8–1652 Filed 1–31–08; 8:45 am]

BILLING CODE 4915–01–P

[1] BNSF was granted authority to operate the line in *The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—Illinois Central Railroad Company*, STB Finance Docket No. 33765 (STB served June 23, 1999).

DEPARTMENT OF VETERANS AFFAIRS

Increase in Mileage Reimbursement Rate and Deductible Amounts in the Beneficiary Travel Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: This notice is to inform the public of the Secretary's decision to increase the Department of Veterans Affairs (VA) Beneficiary Travel program mileage reimbursement rate and deductible amounts under 38 U.S.C. 111 for travel of eligible beneficiaries in connection with VA health care and for other purposes. Effective February 1, 2008, the beneficiary travel mileage reimbursement rate is increased from 11 cents to 28.5 cents based upon mileage traveled to or from a Department facility or other place in connection with vocational rehabilitation, counseling required by the Secretary pursuant to 38 U.S.C. chapter 34, ''Educational Assistance'' or chapter 35, ''Survivors' and Dependents' Educational Assistance'' or for the purpose of examination, treatment or care.

FOR FURTHER INFORMATION CONTACT: Tony A. Guagliardo, Director, Business Policy, Chief Business Office (16), VA Central Office, 810 Vermont Avenue, NW., Washington, D.C. 20420, (202) 254–0406. (This is not a toll-free number)

SUPPLEMENTARY INFORMATION: In accordance with 38 U.S.C. 111, ''Payments or allowances for beneficiary travel'' the Secretary has authority to establish rates for payment of mileage reimbursement for certain eligible beneficiaries. Funding for beneficiary travel mileage reimbursement comes directly from the annual health care appropriation and General Operating Expenses covers the chapter 34 and chapter 35 reimbursement. Funds expended for beneficiary travel decrease those available for direct medical care. Accordingly, due to the steady rise in patient workload and the associated increased demand for VA medical care resources, the beneficiary travel mileage reimbursement rate has not been changed since 1978. The 2008 Appropriations Act provided funding in VA's health care appropriation to increase the beneficiary travel mileage reimbursement rate to 28.5 cents per mile, which is the current reimbursement rate for Federal employees if a Government-owned vehicle is available. The Secretary has thus made the decision to increase VA's beneficiary travel mileage reimbursement rate to 28.5 cents per mile. In making this decision, the Secretary also reviewed and analyzed other factors including the increase in the cost of depreciation of vehicles, gasoline and oil, maintenance, accessories, parts, and tires, insurances and taxes; the availability of and time required for public transportation; and the other mileage allowances authorized for Federal employees.

Title 38 U.S.C. 111(c)(5) requires VA to adjust proportionately the beneficiary travel mileage reimbursement rate deductibles for travel in relation to examination, treatment or care (currently $3 one way; $6 round trip, with a maximum of $18 per calendar month) effective on the date of a beneficiary travel mileage reimbursement rate change. Therefore, based on the increase of the beneficiary travel mileage reimbursement rate the deductible is adjusted proportionately to $7.77 per one way trip; $15.54 for a round trip; with a maximum deductible of $46.62 per calendar month. These deductibles may be waived in accordance with 38 CFR 17.144(b) when their imposition would cause severe financial hardship.

Approved: January 24, 2008

James B. Peake,

Secretary of Veterans Affairs.

[FR Doc. E8–1641 Filed 1–31–08; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Friday,
February 1, 2008

Part II

Department of Veterans Affairs

38 CFR Part 36

Loan Guaranty: Loan Servicing and Claims Procedures Modifications; Final Rule

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900–AL65

Loan Guaranty: Loan Servicing and Claims Procedures Modifications

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document establishes a new series for the Department of Veterans Affairs (VA) Loan Guaranty regulations, which will be phased in over an approximately eleven-month timeframe, as mortgage servicing industry segments ''go live'' on a new computer-based tracking system being established by VA. This new series replicates existing regulations for most aspects of the VA Loan Guaranty program, but also includes changes related to several aspects of the servicing and liquidating of guaranteed housing loans in default, and the submitting of guaranty claims by loan holders. Specific topics revised in the new 4800 series include: increasing authority of servicers to implement loss-mitigation options, making incentive payments to servicers for successful loss-mitigation options, establishing a system of measuring and ranking servicer performance, establishing updated reporting requirements, permitting loan holders to review liquidation appraisals, requiring holders to calculate the net value of the security property prior to foreclosure, establishing a timeframe for when foreclosure of a defaulted loan should be completed, limiting the amount of interest and other fees and charges that may be included in a guaranty claim, establishing allowable attorneys fees to be included in the guaranty claim, establishing a deadline for the submission of guaranty claims, modifying the requirements for title evidence for properties conveyed to VA following foreclosure, modifying the requirements for how long a holder must maintain records relating to loans for which VA has paid a claim on the guaranty, and eliminating the requirement for the submission of legal procedural papers to VA. This document also includes specific revisions to three rules related to increased attorney fee allowances, establishment of a time limit for filing a claim under the guaranty, and granting authority for the Servicer Appraisal Processing Program that will be effective for all program participants upon publication of these rules.

DATES: This rule is effective February 1, 2008.

FOR FURTHER INFORMATION CONTACT: Mike Frueh, Assistant Director for Loan Management (261), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, at 202–461–9521. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION:

Statutory Background

Under 38 U.S.C. chapter 37, VA guarantees loans made by private lenders to veterans for the purchase, construction, and refinancing of homes owned and occupied by veterans.

Business Process Reengineering Review

Beginning in 2001, VA conducted an internal, in-depth review of the entire Loan Administration process that was effectively a business process reengineering (BPR) effort. ''Loan Administration'' includes the servicing of existing loans, dealing with loans in default and loans being terminated, and the processing of claims by loan holders under the guaranty after defaulted loans have been foreclosed or otherwise terminated. Loan Administration also includes efforts by VA and private loan holders to assist homeowners whose loans are in default to cure the default, retain their home if possible, or find other means short of foreclosure. VA's BPR team recommended revising the Loan Administration process to reflect changes in the loan servicing industry in recent years, as well as advances in technology. VA's BPR team also recommended placing greater reliance on private sector servicing in accordance with VA guidelines, with VA using advanced technology to oversee servicing actions.

Regulatory Background

On February 18, 2005 (70 FR 8472), VA proposed to amend its loan guaranty regulations in order to implement the following recommendations proposed by the BPR team: giving servicers increased authority to implement loss-mitigation alternatives to foreclosure and paying servicers an incentive bonus for each successful loss-mitigation alternative to foreclosure; establishing a performance-based tier-ranking system for servicers; permitting qualified loan holders to review liquidation appraisals and establish the fair market value of the property; requiring loan holders to calculate the net value of properties securing loans prior to foreclosure; establishing timeframes for when VA would expect holders, exercising reasonable diligence, should be able to complete the foreclosure of defaulted loans; limiting the amount of interest and other fees and charges that may be included in a guaranty claim; establishing reasonable and customary attorney fees allowed to be claimed under the guaranty; establishing a deadline for holders to submit claims under the guaranty and to request reconsideration of denied claims; modifying the requirements for title evidence submitted to VA when the holder is conveying the property to VA following the liquidation sale; modifying the requirements for how long a holder must maintain records relating to loans for which VA has paid a claim on the guaranty; modifying the requirements for holders to report key events with regard to loans being serviced; and repealing the requirement for holders to provide VA with procedural papers in legal or equitable proceedings related to a loan on the security property. VA published a supplemental notice on November 27, 2006 (71 FR 68498), to provide specific information regarding the computer-based system that VA proposed to implement as part of the loan servicing and claims procedure modifications. VA published another supplemental notice on June 1, 2007 (72 FR 30505), to provide information on a decision to phase-in implementation of most of the new rules, based on previous comments from the industry and the development of VA's computer-based tracking system.

Discussion of Public Comments

The initial public comment period closed on April 19, 2005. VA received 51 comments from the public about various aspects of the proposed changes. The public comment period was reopened following publication of the first supplemental notice and closed December 11, 2006. VA received an additional 8 comments from the public about the proposed reporting requirements for VA's new computer-based system. The public comment period was again reopened following publication of the second supplemental notice and closed June 15, 2007. VA received 2 comments from the public about its proposed phased implementation and clarifications regarding modifications.

The final rule has been revised to incorporate changes that VA agrees are necessary in light of, or as the logical outgrowth of, the comments provided. In order to accommodate the phased implementation of the new rules, VA is establishing a new subpart F (§§ 36.4800 through 36.4893, inclusive) of part 36 that contains substantive rules identical

to those in the current rules (§§ 36.4300 through 36.4393). In addition, we redesignate those current rules as subpart B of title 38, CFR. Subpart F will be effective upon publication of this notice only for the first segment of the mortgage servicing industry, as described in the second supplemental notice published June 1, 2007 (72 FR 30505). The table below is similar to the one in that notice, and provides the effective date for the first segment that will be affected by these rules, as well as an indication of the time periods during which we expect to make these rules applicable to all other segments of the industry (although these time periods may change due to unforeseen circumstances). We will publish as notices in the **Federal Register** the actual applicability dates for industry segments two through nine.

Segment No.	Applicability date of phased-in rules (by calendar year quarter)
1	February 1, 2008.
2	2nd Quarter, 2008.
3	2nd Quarter, 2008.
4	4th Quarter, 2008.
5	2nd Quarter, 2008.
6	3rd Quarter, 2008.
7	3rd Quarter, 2008.
8	3rd Quarter, 2008.
9	4th Quarter, 2008.

Subpart B will continue to be the governing rules for industry segments until the dates they become subject to the new subpart F. VA is aware that certain portions of subpart B, specifically §§ 36.4302 and 36.4312, are in need of revision to match recent legislative amendments, as well as to update VA positions on certain requirements. However, in order to avoid confusion with those issues not directly impacting the servicing and liquidating of guaranteed housing loans in default, and the submitting of guaranty claims by loan holders, those changes have not been included in this rulemaking. Instead, VA is preparing proposed changes to §§ 36.4302 and 36.4312 in subpart B and in the corresponding §§ 36.4802 and 36.4813 in the new subpart F, and will request comments from the public on those changes after the effective date of these new rules.

In our review of subpart B, we also identified a number of minor errors, such as erroneous cross-references, typographical errors, and hanging provisions (flush text) that needed reformatting, and have corrected these wherever necessary in the new subpart F. However such corrections have not affected the rights, responsibilities, or obligations of program participants.

The following paragraphs discuss the comments VA received in response to the proposed rules and the supplemental notices. The paragraphs are in order by the new subpart F section number and provide VA responses. The preamble does not discuss sections about which we did not receive any public comment. The preamble also does not discuss any section that is substantively the same as its counterpart in §§ 36.4300 through 36.4393. However, such a section may contain conforming renumbering changes and/or technical revisions or reorganization. This final rule includes three changes to subpart B in §§ 36.4313(b)(5), 36.4321(d), and 36.4344a, and the comments and rationale for those changes are the same as those in the comments and responses on the new final rules in corresponding §§ 36.4814(b)(5), 36.4824(d), and 36.4848.

36.4800 Applicability of §§ 36.4800 Through 36.4893, Inclusive

Comment: VA should consider the time needed to adapt industry servicing systems and carefully test all aspects of the proposed electronic reporting requirements. This could also include special circumstances such as recent acquisitions, changes in servicing platforms, or other unforeseen situations.

VA Response: VA has carefully considered the factors that are essential to the success of its new electronic reporting environment, and determined that a phased implementation by industry segment offers the best chance for success. Accordingly, VA has established nine industry segments for program participants, with each segment ''going live'' on VA's new computer-based tracking system over an approximately 11-month timeframe. Each phase of implementation will include time for data clean-up, system modifications, defect corrections, testing of interfaces and data transmission, and review of lessons learned before initiating the next phase. Throughout this phase-in process, VA will remain flexible in adjusting its implementation schedule in order to accommodate participants' unique circumstances, such as changes in servicing platforms or unforeseen events. In addition, VA has the authority under § 36.4838 to administratively offer relief to entities not meeting VA requirements, such as electronic reporting.

36.4801 Definitions

Comments: VA should provide its definitions of ''repayment plans'' and ''special forbearances.''

VA Response: When VA published the proposed rule to replace the existing § 36.4317 with an arrangement to establish incentive payments for loss mitigation options, VA believed that the mortgage industry had a common understanding of the basic concepts of repayment plans and special forbearance agreements. However, while reviewing comments, and in researching definitions established by major industry participants (Fannie Mae, Freddie Mac, and the Department of Housing and Urban Development [HUD]), VA realized that each entity has its own slightly different definition for each of these terms. Accordingly, VA has added detailed definitions of ''repayment plan'' and ''special forbearance'' in this final rule in § 36.4801 to avoid any confusion as to what is required for each of these types of loss mitigation actions. VA is also clarifying the role of the servicer by adding a definition to state that the servicer is the entity which will be assigned a tier ranking based on its performance and will receive any incentive payment on a loan it services for the loan holder. The definitions are only minor clarifications of basic concepts customary in the loan servicing industry and do not impose any new requirements or take away any substantive rights of program participants. VA has listed all of the loss mitigation options in § 36.4819 in their preferred order of consideration (i.e., a hierarchy for review), but recognizes that individual circumstances may lead to ''out of the ordinary'' procedures. VA also plans to provide more detailed examples and advice on a number of issues, including repayment plans and special forbearances, as part of the training it will provide to servicers after publishing these rules.

Comment: VA should clarify the payment of incentives for successful loss mitigation efforts.

VA Response: VA concurs. The holder is the entity ultimately responsible for compliance with VA regulations and under § 36.4801 ''Holder'' includes ''the authorized servicing agent of the lender or assignee or transferee.'' However, for purposes of tier ranking (§ 36.4818) and loss mitigation options and incentives (§ 36.4819), VA's intent is to measure performance of the actual loan servicer and reward it accordingly. In order to make this distinction clearer, we provide a definition in § 36.4801 of ''servicer.'' The authorized servicer is

either the servicing agent of a holder; or the holder itself, if the holder is performing all servicing functions on a loan. The servicer is typically the entity reporting all loan activity to VA and filing claims under the guaranty on behalf of the holder. VA will generally issue guaranty claims and other payments to the servicer, who will be responsible for forwarding funds to the holder in accordance with its servicing agreement. Incentives under § 36.4819 will generally be paid directly to the servicer based on its performance under that section and in accordance with its tier ranking under § 36.4818.

Comment: VA should clarify the procedures and implications of debt reductions used to ensure a property is eligible for conveyance to VA.

VA Response: In § 36.4823, we clarify the procedures to be followed to reduce debts in order to gain the right to convey to VA properties acquired at liquidation sales. However, to avoid confusion with multiple definitions of similar terms, we do not use the terms ''Indebtedness'', ''Specified amount'' and ''Unguaranteed portion of the indebtedness'' in this final rule in § 36.4801; that section will instead use the term ''Total indebtedness.'' The terms are defined in § 36.4301 because they are used primarily in §§ 36.4320 and 36.4321. However, the new final §§ 36.4823 and 36.4824 do not contain them and refer only to the total indebtedness as defined in the statute and the new final § 36.4801.

The other definitions included in § 36.4801 that are different from those in § 36.4301 were previously proposed.

36.4809 Transfer of Title by Borrower or Maturity by Demand or Acceleration

In § 36.4308(g), we refer to a time period specified in § 36.4316, which in turn establishes a three-month waiting period prior to the filing of a notice of intention to foreclose. The reporting and processing of defaults is handled differently under the new rules in §§ 36.4800 through 36.4893, and § 36.4818 does not refer to a waiting period. Therefore, in § 36.4809(g), we do not refer to another section but rather refer to the actual time frame of three months.

36.4814 Advances and Other Charges

Comment: VA should review its proposed foreclosure attorney fee schedule, which is very similar to those published by HUD, Fannie Mae, and Freddie Mac in 2001, to account for reasonable increases in living costs over the past several years, as well as other cost increases since that time due to increased labor and operational expenses for attorneys.

VA Response: VA concurs. VA has carefully reviewed the proposed foreclosure attorney fee schedule and has adjusted the amounts in accordance with the information provided in the comments, as well as updated information obtained from other sources. The table provided below, as referenced in final rules § 36.4313(b)(5)(ii) and § 36.4814(b)(5)(ii), is reasonably consistent with the fees allowed by other agencies for comparable work, and the commitment in paragraph (b)(5)(ii) to review the schedule annually will ensure the opportunity to timely address any imbalance in the schedule. In addition, VA has slightly modified the proposed language in new final rules § 36.4313(b)(5)(iii) and § 36.4814(b)(5)(iii) to allow additional trustee fees, above those allowed for legal services, when the trustee conducting the sale must be a Government official under local law, or if an individual other than the foreclosing attorney (or any employee of that attorney) is appointed as part of judicial proceedings, and local law also establishes the fees payable for the services of the public or judicially appointed trustee.

VA intends to reimburse only for attorney fees for services related to foreclosure of loans. Most of the attorneys commenting on the proposed rule reported that over the past five years many servicers have been outsourcing the foreclosure oversight process (i.e., hiring third parties to perform functions previously handled as part of the servicer's routine duties), and firms providing such outsourcing services are charging attorney firms a fee for providing the file needed to initiate the foreclosure action. While VA understands that servicers may find efficiencies in outsourcing certain functions, the cost for such outsourcing must be considered as an operating expense of the firm contracting for the outsourcing; i.e., the servicer. VA cannot consider outsourcing fees to be part of the cost of an attorney fee for completing a foreclosure. Consistent with our proposed rule, VA is establishing maximum amounts for legal services in each State, and those amounts are intended to reimburse for reasonable attorney fees. This is consistent with the position taken by Freddie Mac, which prohibits payment for referral fees, packaging or other similar fees, and new case start-up fees in its Single Family Seller/Servicer Guide, Volume 2, Chapter 71, section 71.18. Fannie Mae also notes in its 2006 Servicing Guide, Part VIII, Chapter 1, section 104.03, that it will not reimburse a servicer for legal fees and expenses related to actions that are essentially servicing functions.

Comment: VA should allow a fee to cover the costs of restarting a foreclosure that has been postponed, for example, by the filing of a bankruptcy petition. This would be in addition to the reimbursement for obtaining relief from the bankruptcy stay.

VA Response: VA concurs. VA recognizes that this is occurring more frequently, and is a true cost of doing business. Therefore, VA has allowed in the table provided herein in accordance with the final rules § 36.4313(b)(5)(ii) and § 36.4814(b)(5)(ii) an additional $350 ''foreclosure restart'' fee when a foreclosure sale is postponed or cancelled through no fault of the servicer or its foreclosure attorney. This includes but is not limited to bankruptcy, VA requested delay, property damage, hazardous conditions, condemnation, natural disaster, property seizure, or relief under the Servicemembers Civil Relief Act.

Comment: VA should consider increasing its maximum allowable bankruptcy fees, for reasons similar to those suggested for foreclosure fees.

VA Response: VA concurs. VA has reviewed the fees allowed by other entities, as well as the arguments made for increasing bankruptcy fees. VA believes that a modest adjustment is appropriate at this time and is revising the table referenced in the final rules in § 36.4313(b)(5)(ii) and § 36.4814(b)(5)(ii) to allow attorney fees of $650 (Chapter 7) or $850 (initial Chapter 13) for obtaining bankruptcy releases directly related to loan termination. For additional relief filed under either chapter, VA will allow an additional $250. VA will continue to monitor these fees on an annual basis.

The current legal services table is as follows:

Jurisdiction	Non-judicial foreclosure	Judicial foreclosure	Deed-in-lieu of foreclosure	Foreclosure restart fee [2]	Chapter 13 release [3]	Chapter 7 release [3]
Alabama	550	N/A	350	350	850	650
Alaska	1200	N/A	350	350	850	650

Jurisdiction	Non-judicial foreclosure	Judicial foreclosure	Deed-in-lieu of foreclosure	Foreclosure restart fee [2]	Chapter 13 release [3]	Chapter 7 release [3]
Arizona	625	N/A	350	350	850	650
Arkansas	750	N/A	350	350	850	650
California	600	N/A	350	350	850	650
Colorado	800	N/A	350	350	850	650
Connecticut	N/A	1250	350	350	850	650
Delaware	N/A	950	350	350	850	650
District of Columbia	600	N/A	350	350	850	650
Florida	N/A	1200	350	350	850	650
Georgia	600	N/A	350	350	850	650
Guam	1200	N/A	350	350	850	650
Hawaii	N/A	1850	350	350	850	650
Idaho	600	N/A	350	350	850	650
Illinois	N/A	1100	350	350	850	650
Indiana	N/A	1000	350	350	850	650
Iowa	550	850	350	350	850	650
Kansas	N/A	850	350	350	850	650
Kentucky	N/A	1100	350	350	850	650
Louisiana	N/A	900	350	350	850	650
Maine	N/A	1250	350	350	850	650
Maryland	800	N/A	350	350	850	650
Massachusetts	N/A	1250	350	350	850	650
Michigan	650	N/A	350	350	850	650
Minnesota	650	N/A	350	350	850	650
Mississippi	550	N/A	350	350	850	650
Missouri	650	N/A	350	350	850	650
Montana	600	N/A	350	350	850	650
Nebraska	600	850	350	350	850	650
Nevada	600	N/A	350	350	850	650
New Hampshire	900	N/A	350	350	850	650
New Jersey	N/A	1300	350	350	850	650
New Mexico	N/A	900	350	350	850	650
New York—Western Counties [1]	N/A	1250	350	350	850	650
New York—Eastern Counties	N/A	1800	350	350	850	650
North Carolina	550	N/A	350	350	850	650
North Dakota	N/A	900	350	350	850	650
Ohio	N/A	1100	350	350	850	650
Oklahoma	N/A	900	350	350	850	650
Oregon	675	N/A	350	350	850	650
Pennsylvania	N/A	1250	350	350	850	650
Puerto Rico	N/A	1100	350	350	850	650
Rhode Island	900	N/A	350	350	850	650
South Carolina	N/A	850	350	350	850	650
South Dakota	650	850	350	350	850	650
Tennessee	550	N/A	350	350	850	650
Texas	550	N/A	350	350	850	650
Utah	600	N/A	350	350	850	650
Vermont	N/A	950	350	350	850	650
Virginia	600	N/A	350	350	850	650
Virgin Islands	N/A	1100	350	350	850	650
Washington	675	N/A	350	350	850	650
West Virginia	550	N/A	350	350	850	650
Wisconsin	N/A	1100	350	350	850	650
Wyoming	600	N/A	350	350	850	650

[1] Western Counties of New York are: Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Steuben, Wayne, Wyoming, and Yates. The remaining counties are in Eastern New York.

[2] When a foreclosure is stopped due to circumstances beyond control of the holder or its attorney (including, but not limited to bankruptcy, VA-requested delay, property damage, hazardous conditions, condemnation, natural disaster, property seizure, or relief under the Servicemembers Civil Relief Act) and then restarted, VA will allow the restart fee in addition to the base foreclosure attorney fee.

[3] For each additional relief of stay under either chapter, VA will pay $250.

Comment: VA should publish a single national reimbursable fee schedule so that servicers will be able to accurately calculate total indebtedness. VA should provide at least 30 days advance notice of changes in fees to allow for system updates and procedural modifications.

VA Response: VA does not concur at this time because this information is maintained at the Regional Loan Center (RLC) level in order to be updated as quickly as possible when local changes occur, so that holders may be reimbursed for actual expenses as they occur, rather than experiencing a lag time. The current schedules provide the local fees and expenses and we believe that this data should continue to be provided at the local level. However, VA will initiate plans to post such a national schedule of fees when this can be accomplished in a timely manner.

36.4815 Loan Modifications

Comment: VA should not require holders to reduce the interest rate on a loan modification where market interest rates have decreased since the date of loan origination.

VA Response: VA does not concur, but is changing the new final rule in § 36.4815 in an effort to make it easier for servicers to administer. The existing VA regulation dealing with loan modifications (§ 36.4314) allows no change to the interest rate on the loan. In fact, another regulation (§ 36.4311(c)) specifically states that interest in excess of the rate reported by the lender when requesting evidence of guaranty shall not be payable. The vast majority of VA-guaranteed loans are securitized in GNMA (Government National Mortgage Association) insured pools, which require the holder to purchase the loan from the pool in order to modify the loan. The proposed change recognized the difficulty faced by loan servicers in attempting to resecuritize loans with interest rates well below the market average, and thus allowed for increasing interest rates on modifications when market conditions dictate. However, VA also believes it is only fair to veterans to similarly reduce interest rates when market rates have decreased since loan origination. The impact of reduced interest rates would be similar to the effect of other creditworthy borrowers refinancing at lower interest rates, and should not adversely affect VA lenders. Therefore, VA is not departing from requiring an interest rate reduction where market interest rates have decreased since loan origination. VA is, however, removing the one percent cap on interest rate increases that had been contained in the proposed rule so that modifications will become a more widely used tool to help veterans retain their homes. VA is also slightly modifying the language that had been in paragraph (c) of the proposed rule in § 36.4314 to make adjustments easier, by allowing the maximum interest rate to be based on a month-end rate, rather than requiring a daily adjustment as the proposed rule had provided. Therefore, § 36.4812(c) is changed to allow a higher interest rate on a modified loan. The final rule in § 36.4815 is changed as described above to remove the one percent cap on increases and to clarify the date to be used in establishing the new maximum interest rate allowable on a modified loan.

Comment: VA should increase the guaranty on a modified loan to match the percentage guaranteed at loan origination, rather than only allowing an increase in the amount of guaranty if it would otherwise provide less than 25% guaranty of the modified loan amount.

VA Response: VA does not concur. The proposal in § 36.4314(g) to increase the guaranty on a modified loan to 25% of the loan amount was another effort to help modified VA-guaranteed loans qualify for resecuritization. Under the existing § 36.4314, the amount of the guaranty does not increase upon loan modification, which means that the percentage of guaranty, in effect, will decrease if the modified loan amount is greater than the original loan amount. This is important because all VA-guaranteed loans greater than $144,000 at origination have a maximum 25% guaranty, and the average new loan is often well above that amount. Under the existing § 36.4314 any such loan being modified would retain the same amount of guaranty, and thus have an effective percentage of guaranty less than 25% whenever the modified loan amount is greater than the original loan amount. This final rule in § 36.4815(h) (due to minor realignment of the section paragraphs) allows the guaranty amount on the modified loan to increase up to 25% of the modified loan amount, subject to the maximum amount of guaranty allowable under the law. This should be sufficient to allow repooling in a new GNMA-insured security, and provide adequate risk sharing for the modified loan among VA, the holder, and GNMA. Therefore, no further revision is necessary, other than conforming language in §§ 36.4802(h) and 36.4824(a).

Comment: VA should not require the same underwriting standards for loan modifications as those used at loan origination.

VA Response: VA does not concur. VA's existing § 36.4314(a) governing loan modifications requires that the holder determine that the borrower is a satisfactory credit risk, and the proposed rule did the same by referencing the criteria in § 36.4337. In establishing that the veteran is a satisfactory credit risk, there must be an analysis of the veteran's income and obligations, as well as a review of the credit history. The proposed rule specifically addressed the issue of credit history with respect to the event(s) that led to the need for loan modification, and the criteria in § 36.4337 provide for the acknowledgement of compensating factors to address issues that might otherwise preclude the extension of credit. VA therefore believes the proposed regulation was sufficiently flexible to accommodate the assessment of the creditworthiness of borrowers who seek to modify their loans, and no changes are necessary in the final § 36.4815(a). A specific comment requested that the use of ''in-file'' credit reports be allowed to reduce costs, and VA agrees this will be in accordance with the way its underwriting criteria have been interpreted in order to expedite processing.

Comment: VA should make provision for other expenses of modification not being rolled into the new loan.

VA Response: VA concurs. The existing § 36.4314 makes no provision for inclusion of any expenses in the modified loan amount. The proposed rule provided that only certain items could be included in the modified indebtedness. VA carefully reviewed the comments on this subject and is clarifying § 36.4815(e) so that it addresses all possible expenses of modification. In addition to allowing holders to include unpaid principal, accrued interest, and deficits in the taxes and insurance impound accounts in the modified indebtedness, holders will also be allowed to capitalize advances required to preserve their lien position, such as homeowner association fees, special assessments, water and sewer liens, etc. By limiting the items that may be included in the modified loan indebtedness, VA is attempting to protect both the interests of the Government and the veteran borrower by keeping the potential loan-to-value (LTV) ratio as low as possible, while recognizing that it may often exceed 100%. In a case where modification is determined to be the best alternative early in the course of a default, there will be little else in the way of other fees and expenses that need to be paid. In such a case the borrower should be able to handle those other costs as a demonstration of creditworthiness, and after including the expenses allowed by the new final rule in the modified loan amount, the resulting LTV ratio may not be significantly different than at loan origination. If a default has continued for quite some time before modification is deemed feasible, then it is likely that the additional fees and costs may have accrued to a sum equal to one or more monthly mortgage payments. VA never envisioned that such fees and costs would be forgiven by the loan holder. Because the modification process involves some period when regular payments are not made on the loan, the borrower should be able to accumulate funds to cover the fees and costs accrued during the default, rather than having them rolled into the modified loan indebtedness. This is similar to the HUD requirements for modifications. As for any costs associated with processing the modification, VA expects that the incentives paid for successful modifications will offset such expenses, and VA will not allow any processing costs to be charged to the borrower as stated in the final § 36.4815(f).

Comment: VA should not require that all current owners occupy the property

and should pay for a title insurance policy covering the modified loan.

VA Response: VA agrees that occupancy should not be a requirement because the basic program requirements do not require continued occupancy in order for the guaranty to remain in effect (i.e., at some point a veteran borrower may move from the home securing the VA-guaranteed loan, but that does not invalidate the guaranty). Hence, § 36.4815(a) will not require that all current owners occupy the property.

As for title insurance policies, existing VA regulation § 36.4828(b) does require that holders obtain and retain a lien of proper dignity against the security property, and title insurance is often used at loan origination to satisfy this requirement. If a holder decides to require title insurance in connection with a loan modification to ensure its lien status, then VA would not object to a reasonable expense to the buyer for this service. Since in most cases a title insurance policy was obtained at loan origination, any insurance obtained at modification would only need to cover the period from loan origination to the date of modification, and it is expected that the cost for a title endorsement, or other form of insurance ''update,'' would be considerably less than the amount paid at loan origination. The final rule in § 36.4815(f) slightly revises the proposed rule to provide this clarification.

Comment: VA should not require that all current owners agree to the modification.

VA Response: VA does not concur. VA is retaining the provision in the new final rule in § 36.4815(a)(5) that all current owners must be obligated on the loan and participate in any modification, because it would not be fair to allow a change in the terms of a loan secured by a property without first notifying all parties with an ownership interest in that property and obtaining their agreement to the change. If a holder encounters unusual circumstances that lead it to believe a modification not meeting the requirements in § 36.4815(a)(1)–(6) would be beneficial to a veteran, then the case may be submitted to VA for prior approval.

Comment: VA should not restrict the number of times that a loan may be modified because other agencies/investors have no such limits.

VA Response: Under § 36.4314, we permit three modifications to any one loan without prior VA approval, but also may allow unlimited modifications with prior VA approval. To that extent, we agree with the comment.

However, to the extent that the comment requests unlimited modifications without VA review, VA does not concur because VA has a responsibility to ensure that loan modifications are fair to the borrower, and to protect the interests of the Government. The final rule in § 36.4815 provides sufficient flexibility to address almost all situations that may arise. Although the rule cannot address every possible circumstance, it does adequately provide for loss mitigation by authorizing holders in advance to modify the vast majority of loans, while allowing holders to seek direct approval from VA for unusual cases that do not fit the general criteria described in the regulation.

In order to avoid any misunderstandings about the authorizations granted, the final rule is modified by adding paragraph (j), which advises that the authority contained in § 36.4815 does not create a right of a borrower to have a loan modified but simply authorizes the loan holder to modify a loan in certain situations without the prior approval of the Secretary. This is in keeping with past VA policy and court decisions over the years that have found that VA's refunding program (§ 36.4820) is not a veteran's benefit, but rather an administrative option established by the regulation to enable VA to assist a veteran when VA makes the determination that the option is appropriate.

Comment: VA should include the words ''or default is imminent'' in § 36.4815(a)(1).

VA Response: VA does not concur. The proposed rule in § 36.4314(a) included those words and the second supplemental notice proposed deleting them. As stated in the second supplemental notice, because VA is proposing a hierarchy of loss mitigation options for consideration within the new regulatory package, it would not be appropriate for a holder to consider modification of a loan until after first considering a repayment plan or a period of forbearance in order to allow loan reinstatement. Therefore, it would not normally be feasible for a holder to consider modification of a loan where default is only imminent, because that would not allow for prior consideration of a repayment plan or a period of forbearance. However, if an unusual circumstance arises, a holder may seek direct approval from VA for approval of a case that does not fit the general criteria. Therefore, the final rule in § 36.4815(a)(1) will remain as proposed in the second supplemental notice.

36.4817 Servicer Reporting Requirements

Comment: VA should review its need for the requested data, should reduce the number of reportable items, and should eliminate the expedited, event-specific reporting.

VA Response: VA concurs for the most part. VA has carefully reviewed the report timing and the required items in the proposed rule in § 36.4315a in light of industry comments, consultation with information technology specialists, and review of the goals and operating procedures in VA's new loan servicing environment, as well as the reporting requirements of HUD, Fannie Mae, and Freddie Mac. In conducting this review, VA identified and retained only those items for reporting that VA determined absolutely necessary to conduct proper oversight of servicer actions. That oversight must include review of servicer actions that are being newly delegated by VA, servicer actions that were previously reviewed by VA utilizing extensive paper reports provided by servicers, and servicer actions that in the past were reviewed only upon submission of various documentation from servicers. Providing this information electronically should greatly reduce the time required for interaction between VA and servicers via telephone and written communications that occurs under the present operating procedures. VA has determined that a number of items (including escrow disbursements and legal actions other than terminations) will not be included in the list of what must be reported to VA. We discuss these items later in this document, responding to specific comments. In addition, remaining items for loans not in default may all be reported on a monthly basis (i.e., no later than the seventh calendar day of the month following the month in which the event occurred), while most of the items related to loan defaults will also be required on a monthly basis, rather than within five business days of an event. VA is changing these events and most of the remaining events that must be reported expeditiously to require reporting within 7 calendar days, rather than 5 business days because most tracking systems are not equipped to calculate business days, but can easily handle computation of calendar days.

As suggested by the comments, one item previously proposed to be reported on all loans, bankruptcy filing information, will only be required on loans reported in default. Only events denoting significant action on loans

reported in default (such as referral to an attorney to initiate foreclosure, establishment of a liquidation sale date, advice that a sale has been held, etc.) will still need to be reported within seven calendar days of the event. As in the past, holders will need to notify VA within 15 calendar days of a liquidation sale when they desire to convey a property to VA.

An example of one item that was in the proposed rule § 36.4315a(c)(2) with a five business day reporting requirement was information on assumption of a VA-guaranteed loan. Existing rule § 36.4303 presently requires reporting of information on approved assumptions and unauthorized transfers of ownership. The first supplemental notice, which provided more detail on the specific events to be reported, required electronic reporting of transfer of ownership (i.e., an authorized assumption) and unauthorized transfer of ownership. In light of the comments, VA is not, under § 36.4817(c), requiring electronic reporting of unauthorized transfer of ownership, but is requiring electronic reporting of authorized transfer of ownership, which will be renamed accordingly. The final rule in § 36.4803(l)(2) continues to require the holder to notify VA within 60 days of learning of an unauthorized transfer, as in the existing § 36.4303(l)(2).

Comment: Information on the Servicemembers Civil Relief Act should only be required if that is a reason for delay of a foreclosure sale.

VA Response: VA concurs with deleting the requirement to report this event. If the event causes delay in loan termination, then information about it may be reported as part of the claim event reporting.

Comment: VA should allow reporting of multiple events occurring on a single loan during a monthly reporting period.

VA Response: VA agrees with this comment and the file reporting format will allow for multiple events to be reported on each loan.

Comment: The requirement to report substantial equity (25% or more) will necessitate a special title search and should be deleted, as it could require servicers to upgrade their systems to load junior lien information and to calculate the equity.

VA Response: VA concurs with deleting this requirement. VA proposed this requirement in § 36.4315a(f) in order to ensure review of cases where substantial equity could exist. However, after reviewing the other data requested and the computing capabilities offered by its new computer system, VA decided it can instead use the other reported data to calculate its own estimate of equity and take appropriate action to ensure that veterans receive every reasonable opportunity to salvage that equity prior to loss through foreclosure. Therefore, there is no requirement in the final rule to calculate or report substantial equity.

Comment: VA should consider using the HUD Single Family Default Monitoring System (SFDMS) file layout for reporting information, rather than requesting data that may not presently be available in many loan servicing systems.

VA Response: VA considered this possibility, but decided it was not feasible. As VA began developing the computer system that it will use to receive data from servicers, VA obtained considerable information about HUD's file layout and other systems from a leading provider of loan accounting and default tracking services, which is subcontracted to the contractor developing VA's system. As that development continued, it was clear that the information VA needs to monitor servicer activities that have been delegated will require more details than those obtained by HUD's SFDMS. This is due to different processes used by the agencies in conducting oversight, as well as making payments for incentives, acquisitions, and claims. VA has found that almost all of the data fields it is still seeking presently exist in most servicing systems. VA worked collaboratively with the providers of the most widely utilized loan servicing systems, and continued to reduce its data requirements as much as possible, in order to develop the easiest file layout and method of transmission for reporting. That layout has been posted on VA's public Web site. Therefore, VA expects that the industry will be able to easily comply with its remaining reporting requirements in § 36.4817.

Comment: VA should consider the potential cost to servicers of the additional reporting requirements, the time needed to implement those changes, and the security risks of transmitting additional information.

VA Response: VA has carefully considered all of those issues in developing its final reporting rule in § 36.4817.

VA recognizes that few changes can be made without some costs. However, by using a fixed width flat file layout, VA is utilizing the simplest format currently available for reporting data. Moreover, VA has developed a methodology to reduce the amount of computations required by most loan servicing platforms when extracting data from their systems to report events to VA. This should also significantly reduce the cost of changes. There will be a few additional data fields that most servicing systems will need to add over time, and VA realizes that there will be some expenses to accomplish this, but the result will be data that is available electronically rather than manually.

While there may be some programming costs incurred by servicers due to the additional reporting requirements in § 36.4817, VA expects that servicers will benefit in a number of ways. First, with the change to electronic reporting, servicers will greatly reduce their monthly expenses of reporting defaults and loan status updates via paper forms to VA, as well as reducing the time required by their employees to respond to written and telephone inquiries from VA. Second, the additional data required is for purposes of VA oversight, but that data should be of considerable value to servicers in tracking their internal servicing performance (for example, providing greater control over insoluble defaults and ensuring faster referral for termination, allowing closer review of payment plans to monitor performance, etc.). Third, having the data available electronically should eliminate many manual processes that are much more costly. VA expects there will be many more areas in which servicers will benefit from the availability of this new data.

VA is well aware that considerable lead time is needed in order to change loan servicing systems to capture additional data. VA has worked with its contractor and subcontractor to develop a phased approach to implementation of its new, computer-based tracking system, the VA Loan Electronic Reporting Interface (VALERI). VA will implement VALERI over an approximately 11-month timeframe, with program participants grouped into nine segments that will ''go live'' on VA's new system during designated phases of implementation. Each phase of implementation will incorporate time for data clean-up, system modifications, defect corrections, testing of interfaces and data transmission, and review of lessons learned before initiating the next phase. VA is also developing a Web portal to allow manual input of information that is not yet contained in major loan servicing systems, and for smaller servicers who may not utilize servicing system providers, although the ultimate goal is automated file transfers of all information.

Data security is of the utmost importance to VA. Servicer suggestions to delete requests for sensitive information, such as Social Security

Numbers (SSNs), have been honored as much as possible. VA will not request SSNs as part of the basic monthly reporting as originally proposed. Instead, the only request for SSNs will be when servicers report them for new loan assumers. Those SSNs and all other data will be encrypted during transmission, appropriate protocols will be established with each servicer and its loan servicing system (or provider) to ensure secure transmissions, and access to the data at VA and its contractors will be limited to authorized users.

36.4818 Servicer Tier Rankings—Temporary Procedures

Comment: In developing its tier rankings, VA should consider a methodology that is publicly disseminated and can easily be determined by servicers based on information available to them. VA should also incorporate some allowance for the purchase of delinquent loans from other servicers.

VA Response: VA concurs to an extent. In our development of a proposed rule to implement the tier ranking system, we will consider the negative impact of the purchase of delinquent loans from other servicers. In the preamble to this proposed rule, VA indicated an intent to model its tier ranking system after that used by the Federal Home Loan Mortgage Corporation (FHLMC), also known as Freddie Mac. After VA has collected data under its new reporting requirements for six months, VA intends to review the data and develop the criteria for ranking servicers. Those criteria will then be published in the **Federal Register** for notice and comment. Whether the final rule that implements the tier ranking system is similar to the Freddie Mac model will depend upon the data we collect and the comments we receive. VA expects that the computer system for collecting data will be operational in 2008, and proposed rules for tier ranking will be published in calendar year 2009. Accordingly, the final rule in § 36.4818 remains as proposed.

Comment: VA should consider paying incentives at higher than the Tier II ranking during the first year, either due to some assessment of higher performance, or else based on a servicer's participation in VA's current Server Loss Mitigation Program (SLMP).

VA Response: VA does not concur. The proposed rule § 36.4316(a) provided for four levels of tier rankings of servicers, with all servicers in Tier II for the initial ranking period as of the effective date of this rule. Because VA will have no published methodology for rating servicer performance during the first year of the new program, it would not be fair to attempt to determine which servicers should be paid at the Tier I or any other level, other than the initial Tier II rating for all servicers. While VA has had the SLMP in operation for many years, that program has not attempted to measure specific performance in a manner similar to the proposed Servicer Tier Ranking system, and the SLMP has only allowed two loss mitigation alternatives, and not the three home retention alternatives in the new program. Accordingly, it would not be fair to grant SLMP participants a higher tier ranking until the criteria for performance have been established. In any event, the proposed incentive payments for Tier II compare favorably to what VA allowed under SLMP, and have been adjusted slightly to account for the time elapsed since the initial publication of the proposed amounts, as well as changes by other agencies during that time. Therefore, the final rule in § 36.4818 remains as proposed.

36.4819 Servicer Loss Mitigation Options and Incentives

Comment: VA should simply adopt HUD (Department of Housing and Urban Development) loss mitigation procedures, fees, and reimbursement schedules, including incentive payment upon execution of a repayment plan, rather than waiting for final or partial completion of the plan to pay for the additional work required in analyzing data and establishing a plan.

VA Response: VA does not concur. VA carefully considered loss mitigation programs developed by HUD, Fannie Mae, Freddie Mac, and private mortgage insurers as part of its BPR project. Although most had attractive features, no one program by itself addressed all the issues of loss mitigation in the manner VA felt was necessary to ensure proper assistance to veterans, while also rewarding loan servicers in an appropriate fashion for success in mitigating potential losses.

As for the comment suggesting that incentives be paid upon execution of a repayment plan or special forbearance agreement because of the work involved in developing the plan, VA believes this is part of the normal activity of servicing a delinquent loan in order to determine whether it may be reinstated or whether the default is insoluble. While one comment was that loss mitigation efforts have historically been considered extraordinary servicing activity, VA believes that any servicer interested in properly managing its portfolio (and ensuring future servicing income) will exert reasonable efforts to obtain borrower financial information to determine the likelihood of loan reinstatement. Therefore, the incentives authorized under this section are in recognition of basic concepts customary in the loan servicing industry, and do not impose any new requirements or take away any substantive rights of program participants. However, paying an incentive simply for executing a repayment or forbearance agreement would not serve as a true incentive for developing a plan that is likely to succeed, but could instead encourage plans where success is improbable. Therefore, VA will not revise its program to make an incentive payable upon execution of a loss-mitigation alternative and the new final rules in §§ 36.4819 and 36.4822(e) and (f) (adjusted from (f) and (g)) remain generally as proposed. In order to clarify VA's intended use of the options and alternatives, they are listed in § 36.4819(b) from top to bottom in their preferred order of consideration (i.e., a hierarchy for review), but VA recognizes that individual circumstances may occasionally lead to ''out of the ordinary'' considerations.

Comment: VA should provide a partial claim loss mitigation benefit similar to that offered by HUD.

VA Response: VA does not concur. Under the HUD Partial Claim option, a mortgagee will advance funds on behalf of a mortgagor in an amount necessary to reinstate a delinquent loan (not to exceed the equivalent of 12 months PITI). The mortgagor will execute a promissory note and subordinate mortgage payable to HUD. Currently, these promissory or ''Partial Claim'' notes assess no interest and are not due and payable until the mortgagor either pays off the first mortgage or no longer owns the property.

The issue of a similar VA partial claim program has been discussed for many years within Congress and at VA. However, Congress has not specifically authorized VA to develop such a program. As explained above, partial claim payments are actually payments on behalf of homeowners to their loan holders, but VA has no authorization to make direct loans to borrowers to cover their delinquent payments, so a partial claim program is not feasible. Instead, VA believes that by encouraging holders to consider extended repayment plans or even loan modifications, borrowers should receive the assistance necessary to retain ownership of their homes. Therefore, VA does not concur that a partial claim program should be instituted in the new final rule in § 36.4819.

36.4820 Refunding of Loans in Default

Comment: VA should establish a process to extend the deadline to allow for recording of documents.

VA Response: VA does not concur. VA proposed in § 36.4318(c) to establish a deadline for submission of title documents on refunded loans, and to allow VA to impose a penalty for continued failure to comply with that deadline. VA must retain the option to take appropriate action when a holder has demonstrated a continued pattern of non-compliance with VA requests for timely delivery of documents that should be readily available, given the routine nature of loan transfers within the industry. VA has slightly modified the language to clarify that in accordance with the general rule, as applied throughout VA's regulations, notice to VA is deemed to be effective as of the date that VA receives such notice; notice from VA to others is deemed effective as of the date that VA sends or transmits such notice. If a holder encounters an occasional delay due to failure by a former servicer to adequately document a servicing transfer, for example, then VA does not expect to take the action authorized by the proposed rule in § 36.4318(c). On the other hand, if a servicer routinely fails to properly perform its duties on behalf of the holder and consistently fails to timely provide documents that should be readily available, and if the servicer fails to correct its practices after VA provides notice, then the final rule in § 36.4820(c) enables VA to focus the attention of the servicer to its problems by temporarily withholding all payments until the specific deficiencies cited by VA have been resolved. Therefore, the ''process'' proposed by the comment is not necessary and the final rule in § 36.4820 remains as proposed.

Comment: VA should make the title document requirements for refunding conform to the liquidation title package requirements.

VA Response: VA does not concur. The proposed rule § 36.4318 required provision of all legal documents required to evidence proper loan transfer. Refunding of a loan is simply an assignment, rather than a liquidation, and therefore does not involve documents establishing ownership of a property. Accordingly, the title document requirements for refunding review and conveyance of properties must be different. The final rule § 36.4820(c) remains as proposed.

36.4821 Service of Process

Comment: VA should define ''procedural papers'' in more detail—for example, does this include pleadings, claim back up, etc.?

VA Response: VA does not concur. The existing rule § 36.4319(a) requires that all ''procedural papers'' be provided to VA whenever a loan holder institutes suit or otherwise becomes a party in any legal or equitable proceeding brought on or in connection with the guaranteed or insured loan indebtedness, or involving title to, or other lien on, the security. The final rule § 36.4821(a) requires only that VA and the United States Attorney be provided with process when the Secretary of Veterans Affairs is actually named as a party to a legal action, which is effectively the definition of ''procedural papers'' that must be delivered to VA. VA has no specific requirement for the retention of pleadings or other actions in the normal course of a loan termination, although the final rule in § 36.4833 requires the holder to maintain a record of the amounts received on the obligation and disbursements chargeable thereto and the dates thereof, including copies of bills and receipts for such disbursements. This is the type of ''claim backup'' referenced in § 36.4824(d)(5), which provides that supporting documents will not be submitted with the claim under guaranty, but are subject to inspection as provided in § 36.4833. The final rule § 36.4821 remains as proposed.

36.4822 Loan Termination

Comment: VA should adjust the timeframes for foreclosure and also establish automatic extensions for many different types of delays.

VA Response: VA has reviewed all of the individual State timeframes for foreclosure in the proposed rule § 36.4319a(a), has taken into consideration the specific information provided in the comments on the processes, and is adjusting the timeframes in the final rule. In addition, VA is slightly revising the final § 36.4814(f)(2) and § 36.4824(a)(3)(ii), which describe the calculation of the maximum interest payable on a foreclosure, so that the calculation of the date to which interest will be paid shall include 210 calendar days from the due date of the last paid installment, in addition to the State calendar day timeframe for foreclosure. This is in response to comments requesting additional time for loss mitigation efforts. It equates to the present guideline used by VA in establishing interest cutoffs, in that it allows 180 days from the date of last paid installment (which is typically the time that VA requests initiation to terminate a loan), plus 30 days (which reflects the time allowed for initiation of such action under the existing § 36.4319(f)), plus the actual time to complete foreclosure. The timeframes will be reviewed as appropriate and changes published in the **Federal Register**, and maintained throughout the year on a Web site under VA's control, such as at *http://www.homeloans.va.gov.* The timeframes have been revised to reflect that the timeframes are in calendar days. The timeframes effective as of the date of this rule are as follows:

Jurisdiction	Procedure	Final event	Time frame (calendar days)
Alabama	Non-Judicial	Sale	60
Alaska	Non-Judicial	Sale	120
Arizona	Non-Judicial	Sale	120
Arkansas	Non-Judicial	Sale	90
California	Non-Judicial	Sale	150
Colorado	Non-Judicial	Sale	150
Connecticut	Judicial	Sale (Vesting Date)	180
Delaware	Judicial	Confirmation/Ratification	240
District of Columbia	Non-Judicial	Sale	60
Florida	Judicial	Confirmation/Ratification	150
Georgia	Non-Judicial	Sale	90
Guam	Non-Judicial	Sale	180
Hawaii	Judicial	Confirmation	240
Idaho	Non-Judicial	Sale	180

Jurisdiction	Procedure	Final event	Time frame (calendar days)
Illinois	Judicial	Sale	300
Indiana	Judicial	Sale	270
Iowa	Judicial	Sale	180
	Non-Judicial	Sale (Filing of Affidavit)	60
Kansas	Judicial	Sale	150
Kentucky	Judicial	Confirmation	150
Louisiana	Judicial	Sale	180
Maine	Judicial	Sale	300
Maryland	Non-Judicial	Ratification Date	90
Massachusetts	Judicial Order	Sale	180
Michigan	Non-Judicial	Sale	90
Minnesota	Non-Judicial	Sale	90
Mississippi	Non-Judicial	Sale	90
Missouri	Non-Judicial	Sale	60
Montana	Non-Judicial	Sale	150
Nebraska	Judicial	Confirmation	180
	Non-Judicial	Sale	120
Nevada	Non-Judicial	Sale	150
New Hampshire	Non-Judicial	Sale	90
New Jersey	Judicial	Sale	300
New Mexico	Judicial	Confirmation	180
New York—Western Counties [1]	Judicial	Sale	240
New York—Eastern Counties	Judicial	Sale	270
North Carolina	Non-Judicial	Sale	120
North Dakota	Judicial	Sale	240
Ohio	Judicial	Confirmation	360
Oklahoma	Judicial	Confirmation	210
Oregon	Non-Judicial	Sale	150
Pennsylvania	Judicial	Sale	270
Puerto Rico	Judicial	Confirmation	450
Rhode Island	Non-Judicial	Sale	90
South Carolina	Judicial	Sale	180
South Dakota	Judicial	Sale	150
	Non-Judicial	Sale	90
Tennessee	Non-Judicial	Sale	60
Texas	Non-Judicial	Sale	90
Utah	Non-Judicial	Sale	150
Vermont	Judicial	Sale	300
Virginia	Non-Judicial	Sale	60
Virgin Islands	Judicial	Sale	540
Washington	Non-Judicial	Sale	150
West Virginia	Non-Judicial	Sale	60
Wisconsin	Judicial—Abandoned	Confirmation	210
	Judicial—Tenant Occupied	Confirmation	240
	Judicial—Owner Occupied	Confirmation	330
Wyoming	Non-Judicial	Sale	90

[1] Western Counties of New York are: Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Steuben, Wayne, Wyoming, and Yates. The remaining counties are in Eastern New York.

As for automatic extensions of timeframes due to delays beyond the control of the holder, VA has been developing its system to accomplish this, based on event updates provided by holders. In determining those events that are beyond the control of the holder, VA considered the policy of HUD and the other comments provided. VA believes the largest factor causing delays in foreclosures is the filing of bankruptcy petitions, and by receiving information on such actions as part of the normal event reporting, VA will have on hand the information to automatically adjust the interest computation date when calculating the claim payable under § 36.4824.

When VA receives notice of a bankruptcy filing, the system should automatically allow up to 180 calendar days to enable the servicer to obtain relief from the bankruptcy. VA believes this should be sufficient for most single filings and may cover some multiple bankruptcy cases. If more time is needed, the servicer can request approval from VA for additional time due to delays caused by multiple bankruptcy filings.

VA believes that many of the other events mentioned in the comments as beyond the control of the holder are very infrequent and do not require a process to automatically account for those delays in claim calculation. First, this final rule provides VA the discretion to treat such delays as exceptions and then to allow the holder to justify charging additional interest if the delays extend completion of the liquidation past the timeframe calculated under § 36.4824(a)(3). Given this discretionary authority, we do not find it necessary to incorporate specific rules as to infrequent events. Furthermore, VA does not believe that additional interest should be payable for delays that are generally within the control of the loan holder, such as title issues or missing documents that the holder should have resolved in the normal course of business, rather than waiting until termination to seek resolution. However, we recognize that some delays may require detailed

review and exchange of information to establish whether they were beyond the control of the holder. VA's regulations are flexible enough to allow for this.

Comment: VA should eliminate the requirement for a promissory note in connection with deeds-in-lieu of foreclosure and compromise sales.

VA Response: VA concurs. VA reviewed the proposed rule, § 36.4319a(f)(v), (g)(vi), and (h), which required a promissory note in connection with certain deeds-in-lieu of foreclosure and compromise sales, as well as the comments concerning the additional work required in calculating whether a promissory note would be required, and the work necessary to actually obtain such a note. Because the purpose in authorizing deeds and compromise sales is to expedite the processing of such alternatives, and because VA has the authority in § 36.4826(e)(1) to approve a complete release of the Secretary's right to collect a debt related to payment of a claim under the loan guaranty, and the law governing the program provides in 38 U.S.C. 3703(e) that the majority of veterans will not be liable for such indebtedness following loan default, VA has decided to automatically determine that the cooperation of the borrower in completing a deed-in-lieu of foreclosure or a compromise sale is sufficient to justify VA waiver of collection of any indebtedness. Accordingly, the final version of § 36.4822 does not require the holder to obtain a promissory note in connection with a deed-in-lieu of foreclosure or a compromise sale.

VA has also removed the requirements proposed in §§ 36.4319a(f)(iii) and 36.4319a(g)(iv) that the holder determine that the estimated guaranty payment following a deed-in-lieu of foreclosure or compromise would not exceed the estimated payment if the loan proceeded to foreclosure. VA believes there will almost always be cost savings associated with deeds-in-lieu of foreclosure and compromise sales, and therefore will not require the holder to perform an additional calculation as part of the approval process. Cost savings will typically accrue from the reduced cost of a deed versus a foreclosure action, the likelihood that the borrower will be more cooperative in vacating a home after giving a deed instead of being foreclosed upon, and the probability that the home will be in better condition after the borrower gives a deed and arranges an orderly transfer of custody to the holder or VA's agent, rather than the property being abandoned due to foreclosure and subject to possible vandalism. In the case of a compromise claim, VA's requirement that the credit to the indebtedness equals or exceeds the net value of the property will generally ensure cost savings as compared to foreclosure, but even in the rare case when this does not occur, the benefit to the veteran of avoiding foreclosure through a private sale of the home is more than enough to justify acceptance of a compromise offer. The final rule in § 36.4822 incorporates the changes discussed in this section along with those not changed from the proposed rule.

36.4823 Election to Convey Security

Comment: VA should clarify the procedures and implications of debt reductions used to ensure that a property is eligible for conveyance to VA.

VA Response: VA has revised the applicable portions of the new final rule in § 36.4823 to clarify the procedures to be followed to reduce debts in order to gain the right to convey to VA properties acquired at liquidation sales. Under the law (38 U.S.C. 3732(c)), if the calculation by the holder shows that the net value is less than the unguaranteed portion of the loan (i.e., the eligible indebtedness minus VA's maximum claim payable under the guaranty), then the property may not be conveyed to VA. VA has had a longstanding policy, however, of allowing holders to bring such a conveyance into statutory compliance by ''buying down'' the debt to a level where the unguaranteed portion of indebtedness is less than the net value. In these situations, holders must waive any liability a veteran might have otherwise with regard to the amount of indebtedness bought down.

This policy would have continued under the proposal, but it would have been the holder, rather than VA, that was responsible for calculating the buy-down, if any, prior to a liquidation sale. VA received a number of comments expressing concern about the impact that any miscalculation would have on the holder, the servicer, and the veteran, and has therefore revised the final rule in § 36.4823, so that a holder may wait until after the liquidation sale to determine the amount that must be bought down. To make sure the veteran is fully informed, the holder will be required to send the borrower notice no later than 15 calendar days after receipt of VA's guaranty claim payment that the indebtedness in excess of the net value and VA's claim payment has been waived. In addition, VA is revising the final rule in § 36.4838 to designate the conveyance as of an administrative or procedural nature to allow for reasonable accommodations.

Comment: VA should withdraw the proposal to require three year warranties when conveying property to VA, due to the additional burden this would place on servicers and foreclosure attorneys, who would bear the cost of insuring title to the property without receiving adequate compensation.

VA Response: VA concurs. VA's goal in the proposed § 36.4320(c) was to standardize and reduce the documentation required as evidence of acceptable title on properties conveyed to the Secretary. The comments received to the proposed rule provided additional insight on many aspects of the present processes that were not clearly evident to VA previously. For example, in many jurisdictions VA was paying for title insurance policies, but had little occasion to seek indemnity under those policies and believed that purchasing title policies was not cost effective. However, the comments disclosed that many title issues were resolved through the title examination required prior to issuance of the policies. Moreover, many attorneys commented that the compensation received for their participation in the sale of title insurance served to reduce the cost they charged for foreclosure services. It appears that if VA were to eliminate title insurance as an option to establish acceptability of title on properties conveyed to VA, foreclosure attorney fees would increase and many title issues would not be discovered until well after conveyance, which could cause considerable interruption in VA's resale efforts. Accordingly, VA is withdrawing the proposed requirement for a three year warranty, and will instead attempt to standardize document requirements nationwide as much as possible, which in most cases will still include an owner's title insurance policy issued after loan termination in the name of the Secretary along with minimal other documents, such as the state-specific foreclosure document, the original deed of trust or mortgage, special warranty deed from the holder to the Secretary, an original or a copy of mortgagee's title policy, loan assignments, and appointment of substitute trustee. This information is maintained at the RLC level and will continue to be available in the same manner. Accordingly, the proposal to change § 36.4320(c) to require a three year warranty on a conveyance is not included in the new final rule § 36.4823.

Comment: VA should require and pay for a title insurance policy in connection with a deed-in-lieu of foreclosure.

VA Response: VA concurs. VA agrees that requiring a title policy in connection with a deed-in-lieu of foreclosure is necessary and would expedite the process of conveying a property to VA and the subsequent marketing of that property. Therefore, VA is revising the final rule in § 36.4823(c)(4) to provide reimbursement for a title policy when a property is subsequently conveyed to VA by deed-in-lieu of foreclosure.

36.4824 Guaranty Claims; Subsequent Accounting

Comment: VA should incorporate in its rule that any errors found in post claim audits will not be extrapolated over a servicer's prior claim submissions in an effort to recover claim payments that have not been actually identified.

VA Response: VA does not concur, as VA does not believe that such a restrictive rule in § 36.4824 would be in the best interests of the taxpayers supporting the VA home loan program. Extrapolation is basically the practice of reviewing a small sample of cases, determining an error rate, and then applying that error rate across an entire population of claims. While VA does not expect to routinely extrapolate in such a manner, this is a generally accepted tool of auditing that must be preserved.

Before VA would reach the point of exercising this option, it would first follow-up with a holder/servicer to address errors that occurred on a routine basis, and would provide extensive notice of errors discovered that might lead to the extrapolation of errors across all claim submissions. VA does not expect that extrapolation will be applied except in the most egregious cases. Hence, we make no changes based on this comment.

Comment: VA should not impose a one-year deadline for filing claims, or should at least make the penalty more reasonable, because the penalty far outweighs the impact of late filing. In addition, VA should wait until the end of any redemption period before starting the one-year deadline.

VA Response: VA does not concur. The proposed rule § 36.4321(d) required submission of a claim under guaranty no later than one year after the liquidation sale. To ensure accuracy in the Federal budget process, VA needs to know within a reasonable time that specific loans for particular cohort years have been terminated and that costs will be incurred. With the highly automated processes that are being implemented, VA believes that holders should be able to ascertain all necessary information and submit a claim within one year of the completion of the loan termination process, even if a redemption period exists in the particular jurisdiction. However, if there is some valid reason why an individual claim is not timely submitted, we will reserve the right to pay a late claim. Accordingly, VA § 36.4838(a)(3) includes the failure to timely file a claim as a provision of an administrative or procedural nature that may be waived by an official named in § 36.4845. The final rules in § 36.4321(f) and § 36.4824(d) retain the requirement to submit a claim within one year after the liquidation sale. VA § 36.4335 is not modified to include failure to timely file a claim as a provision of an administrative or procedural nature because all servicers will be under the new subpart F requirements in less than one year, so the need to grant relief under subpart B will not be necessary.

36.4828 Partial or Total Loss of Guaranty or Insurance

Comment: The proposed rules did not discuss any plans to implement penalties for late or faulty reporting.

VA Response: The ability to impose penalties already exists. Final rule § 36.4828, based on current § 36.4325, allows VA to adjust claims to the extent that any failure to comply with a regulation increases the ultimate liability of the Secretary. Therefore, no further provision is needed to establish VA's right to impose a penalty when a servicer's failure causes increased liability to VA. The new final rule § 36.4828(b) is slightly different from the existing § 36.4325(b) in order to improve its structure. In addition, while the proposed rule stated that in § 36.4325 two citations (§ 36.4325(b)(5) and (6)) would be deleted and replaced by one new citation for electronic reporting, in the final rule § 36.4828(b), the one citation for electronic reporting (§ 36.4828(b)(4)) actually replaces what are three citations in the existing § 36.4325(b)(4), (5) and (6).

36.4833 Maintenance of Records

Comment: Servicers should not be required to submit audit documentation to VA in a particular imaged format as a condition of doing business with VA.

VA Response: VA concurs. VA did not intend to require a specific imaging format, but inadvertently did so by citing only three specific formats in the proposed rule. This has been changed in the final § 36.4833 to provide that required documents sent to VA electronically be in .jpg, .gif, .pdf, or a similarly widely accepted format.

Comment: Servicers should not be required to provide imaged documents for audits, as this will greatly increase their costs.

VA Response: VA does not concur. Servicers are presently required by VA policy and the authority in § 36.4330 to submit paper documentation with *all claims* under the guaranty. That involves copying *all documents* related to payments received on a loan, disbursements chargeable thereto, and the dates thereof, including copies of bills and receipts for such disbursements, which may require conversion of electronic documents to paper form. VA proposed instead in § 36.4321(d) that servicers submit the *information* in those documents in an electronic format when filing a claim, while retaining the supporting documents in the event of a post-claim audit by VA. Post-claim audits by VA will typically involve only a percentage sampling of submitted claims, so the number of cases for which documentation will eventually be submitted to VA will be greatly reduced. VA does not specify how servicers must retain documents in order to comply with this or any other regulatory and statutory requirements, but will allow a reasonable period of time for access to the documents upon request. The proposed requirement to submit electronically only the documents on cases selected for post-audit should be much less of a burden on servicers, because even if converting a document to electronic format may be more costly than making a paper copy, the overall reduction in the number of documents that must be submitted should result in lower costs. Therefore, VA finds no basis for changing the proposal in the final rule § 36.4833.

Comment: The proposed exception to allow submission of paper documents based on size of servicing portfolio is confusing.

VA Response: VA concurs and has deleted this exception in the final rule § 36.4833. The fast-paced growth in technology has resulted in its wider availability at ever decreasing costs, so the requirement for electronic submission of documents to VA will not create a significant burden for a servicer of any size.

VA has also corrected erroneous dates that appeared in the proposed § 36.4330(c). When the rule was being drafted it was hoped that it could be effective October 1, 2005, and that date was intended to apply to both types of documentation required, even though the second date was shown as October 1, 2004. In the final § 36.4833 both dates are shown as the effective date of the new rule.

36.4836 [Reserved]

The corresponding § 36.4333 titled ''Satisfaction of indebtedness'' will not be included in subpart F. This is because the new final § 36.4817(c)(1) requires electronic reporting of loans paid in full, thereby obviating the need for instructions on paper notification of payment in full. This § 36.4836 will be shown as reserved for future use.

36.4838 Supplementary Administrative Action

In response to several comments about the need for discretion on the exercise of new authorities in the new subpart F, VA is including in the new final § 36.4838 additional items of an administrative or procedural nature, including some which replace existing items in the corresponding section of subpart B.

36.4848 Servicer Appraisal Processing Program

Comment: Servicers expressed concern about accepting the risk that VA might later determine that values rendered by the Servicer Appraisal Processing Program (SAPP) were too high and then adjust claims or even reconvey properties. Servicers also expressed concern that they would be unable to employ sufficient numbers of staff review appraisers, and instead want to rely only on values provided by VA-approved appraisers.

VA Response: VA believes that servicers should not be concerned about these matters. VA presently prescribes uniform qualifications for appraisers in accordance with 38 U.S.C. 3731. However, that same section requires review by VA of appraisal reports prior to determining the reasonable value of a property that is the security for a VA-guaranteed loan. Public Law 100–198, enacted December 21, 1987, authorized the Lender Appraisal Processing Program (LAPP), which enables VA to permit qualified lenders to review loan-origination appraisals, ensure adherence to VA-published minimum property requirements, and set the reasonable value of properties for purposes of determining the maximum loan VA could guarantee.

VA's experience is that delegating appraisal reviews to lenders under the LAPP has worked well and often expedites the loan-origination process. About 95% of all new appraisals are reviewed under LAPP. The number of appraisals required for loan liquidation purposes is significantly lower than the number related to new loan originations, amounting to about 15% of total appraisals reviewed. With lenders employing enough qualified staff appraisal reviewers to handle 95% of new appraisals, there should be no shortage of reviewers available to handle the much lower volume of liquidation appraisals.

Servicers should have no concerns about VA reconveying properties due to value increases made by staff appraisal reviewers, as VA regulations do not provide for such a practice. As contained in the proposed rule, the final rule in §§ 36.4344a(d) and 36.4848(d) does retain the right for VA to be indemnified for additional loss caused by an increase in value made by the servicer that was unwarranted, or arbitrary and capricious. The final rule in §§ 36.4344a(h) and 36.4848(h) also retains provisions to withdraw, for proper cause, authority of servicers to determine reasonable values, such as determination of a pattern of appraisal reviews being conducted in a careless or negligent manner, especially after being called to the servicer's attention. Such withdrawal of authority would simply return servicers to the position of waiting for VA staff appraisers to review liquidation appraisals and establish reasonable values, rather than being able to more quickly establish fair market value and determine the net value of the property for liquidation purposes. Accordingly, we make no changes based on this comment.

36.4850 Servicing Procedures for Holders

Comment: VA should adjust the timeframe for reporting abandoned properties in relation to the date on which inspections will be required. VA should also retain the 15-day reporting schedule rather than the proposed 5-day rule.

VA Response: VA concurs. In the proposed § 36.4346(i) VA intended simply to ensure prompt notice when a holder learns of an abandoned property, which could occur prior to verification through a required property inspection. However, VA agrees that the majority of notices about abandoned property will be the result of property inspections, which will not typically be received until a loan is at least 60 days delinquent, and is therefore changing the final rule accordingly. Reporting of this event will fall under the provisions of the final rule in 38 CFR 36.4817(c)(10), which will require reporting no later than the 7th calendar day of the month following the month the occupancy status change was verified.

Comment: VA should reconsider the requirements related to abandonment and extraordinary waste or hazard.

VA Response: VA concurs. Since the time of the proposed rule change to § 36.4346(i)(2), events such as Hurricane Katrina have demonstrated the difficulty in mandating loan termination due to the appearance of the potential for extraordinary waste. VA has even issued guidance to holders following Katrina to exercise additional caution before deciding that a property in a major disaster area could be subject to additional waste because of an apparent lack of care, since many people were displaced without the resources to quickly return and attempt repairs to their homes. Therefore, VA is deleting that part of the proposed rule that would have added ''extraordinary waste or hazard''.

The first two sentences of the existing rule § 36.4346(i)(2) describe actions to be taken when a holder obtains information that ''indicates'' a property may be abandoned, and the proposed rule change was primarily to conform reporting requirements to the proposed rule § 36.4315a. VA believes that while the term abandoned may be somewhat subjective, there are obvious situations, such as when the borrower mails in the keys and advises the holder that no further payments will be made, in which a holder will have no doubt that the property is abandoned. The existing rule calls for action that should lead to confirmation of whether or not a property is actually abandoned. Thus, the final rule in § 36.4850(i)(2) will retain the mandate to report abandonment in accordance with § 36.4817(c)(10) as a change in occupancy status and initiate termination when abandonment has been confirmed.

Comment: In changing the requirement for provision of an annual statement for income tax purposes, VA should be consistent with Internal Revenue Service (IRS) requirements.

VA Response: VA concurs. It was VA's intent in the proposed revision to § 36.4346(c) to change from 60 days to 30 days to achieve that consistency. However, the comment pointed out that IRS requires annual statements be sent no later than January 31st of each year, so VA's requirement of 30 days would be different. Accordingly, the final rule § 36.4850(c) has been changed to require an annual statement be provided before February 1st of each calendar year.

36.4979 Payment of Insurance

As with § 36.4809, this requires a conforming amendment in the final rule. The existing rule in § 36.4374 refers to a time period specified in § 36.4316, which is three months. Because reporting and processing of

defaults are handled differently in the new rules in §§ 36.4800 through 36.4893, inclusive, there is not a similar waiting period specified in § 36.4818. Therefore, the final rule in § 36.4879 will replace the reference to another section with the actual time frame of three months. There is a similar situation with a reference in § 36.4374 to reporting under § 36.4317, and in this case the final rule in § 36.4879 will refer to the applicable reporting required by §§ 36.4817 and 36.4850.

Restructuring of and Authority for Part 36

In order to make it easier to refer to the new §§ 36.4800 through 36.4893, inclusive, VA is designating those sections as subpart F of part 36. VA is grouping other portions of part 36 into appropriate subparts as shown in this notice. Also, to make it easier to identify the appropriate authority for each section of the new subpart F, VA is revising the citation for the authority of part 36 to refer only to the general authorities, and is including the specific appropriate authority for each section in the new subpart F.

Administrative Procedures Act

Pursuant to 5 U.S.C. 553(d)(3), we find that there is good cause to dispense with the 30-day delayed effective date requirement. The public has received extensive knowledge of the changes effected by the new rules through the initial publication of the proposed rules and two supplemental notices of revisions to the initial proposals, and VA has received advice that the public is anxious for the new rules to be effective.

One of the primary changes in the new rules is the implementation of electronic reporting of information on VA-guaranteed home loans. Due to the extensive time required for information technology system changes, industry participants in the VA home loan program initiated development work on the system changes soon after the first supplemental notice provided sufficient details. The first industry segment under the planned phased implementation is prepared to begin operations under the proposed changes immediately upon publication of the new rules, and any delays in implementation would create financial burdens as they continue to operate under the old rules while maintaining additional system capability for operations under the new rules. Moreover, all other industry segments will not be subject to these electronic reporting rules for more than 30 days after these rules become effective, and therefore the 30-day delayed effective date would not affect any segment other than the first. VA is also prepared to accept electronic reporting upon publication of the new rules, and veterans will begin to benefit from the new rules as soon as they are effective. Any delays will be financially costly to the Government, both in terms of additional contracting support required until final implementation, and with respect to the loss of savings expected for the program under the new rules.

The changing economic situation, with increasing numbers of foreclosures nationwide, also contributes to the need for immediate implementation of the new rules for several reasons. The new environment for servicing VA-guaranteed home loans created by these rules will encourage earlier additional loss mitigation efforts by private servicers in place of the present Government outreach at later stages of loan default. These earlier efforts should result in more veterans being able to reinstate delinquent loans and avoiding foreclosure. This will also result in fewer claims paid by VA, while the claims actually paid will be less under the new rules due to the standardized timeframes for completing termination in those cases where it is unavoidable. In addition, the increased legal fees for termination allowed under the new rules will ensure that VA-guaranteed loans receive the same priority as those of other guarantors, insurers and investors in the termination process, thereby avoiding the costs associated with undue delays.

Due to the issues described above, it is imperative that the new rules become effective immediately upon publication. Accordingly, there is good cause under section 553(d)(3) to dispense with the 30-day delayed effective date requirement.

Paperwork Reduction Act of 1995

This final rule contains provisions that constitute collections of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521). In the preamble of the proposed rule, we described the information collections that would need OMB approval and provided a comment period. OMB has approved those proposed collections and has assigned control numbers 2900–0021, 2900–0045, 2900–0112, 2900–0362, and 2900–0381. OMB assigns control numbers to collections of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an 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 given year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a ''significant regulatory action,'' requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, as any regulatory action 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 economic, interagency, budgetary, legal, and policy implications of this final rule have been examined, and it has been determined to be a significant regulatory action under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. The vast majority of VA loans are serviced by very large financial companies. Only a handful of small entities service VA loans and they service only a very small number of loans. This rule, which only impacts veterans, other individual

obligors with guaranteed loans, and companies that service VA loans, will have very minor impact on a very small number of small entities servicing such loans. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program number and title for this program is 64.114, Veterans Housing Guaranteed and Insured Loans.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing, Indians, Individuals with disabilities, Loan programs—housing and community development, Loan programs—Indians, Loan programs—veterans, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Veterans.

Approved: October 24, 2007.

Gordon H. Mansfield,

Acting Secretary of Veterans Affairs.

Editorial Note: This document was received at the Office of the Federal Register on January 23, 2008.

■ For the reasons set out in the preamble, 38 CFR part 36 is amended as set forth below.

PART 36—LOAN GUARANTY

■ 1. The authority citation for part 36 is revised to read as follows:

Authority: 38 U.S.C. 501 and as otherwise noted.

■ 2. Remove the undesignated center heading preceding § 36.4201 and the authority citation directly below that center heading.

■ 3. A heading for subpart A is added preceding § 36.4201 to read as follows:

Subpart A—Guaranty of Loans to Veterans to Purchase Manufactured Homes and Lots, Including Site Preparation

* * * * *

■ 4. Remove the undesignated center heading preceding § 36.4300 and the authority citation directly below that center heading.

■ 5. A heading for subpart B is added preceding § 36.4300 to read as follows:

Subpart B—Guaranty or Insurance of Loans to Veterans

* * * * *

■ 6. Revise § 36.4313(b)(5) to read as follows:

§ 36.4313 Advances and other charges.

* * * * *

(b) * * *

(5)(i) Fees for legal services actually performed, not to exceed the reasonable and customary fees for such services in the State where the property is located, as determined by the Secretary.

(ii) In determining what constitutes the reasonable and customary fees for legal services, the Secretary shall review allowances for legal fees in connection with the foreclosure of single-family housing loans, including bankruptcy-related services, issued by HUD, Fannie Mae, and Freddie Mac. The Secretary will review such fees annually and, as the Secretary deems necessary, publish in the **Federal Register** a table setting forth the amounts the Secretary determines to be reasonable and customary. The table will reflect the primary method for foreclosing in each state, either judicial or non-judicial, with the exception of those States where either judicial or non-judicial is acceptable. The use of a method not authorized in the table will require prior approval from VA. This table will be available throughout the year on a VA controlled Web site, such as at *www.homeloans.va.gov*.

(iii) If the foreclosure attorney has the discretion to conduct the sale or to name a substitute trustee to conduct the sale, the combined total paid for legal fees under paragraph (b)(5)(i) of this section and trustee's fees pursuant to paragraph (b)(4) of this section shall not exceed the applicable maximum allowance for legal fees established under paragraph (b)(5)(ii) of this section. If the trustee conducting the sale must be a Government official under local law, or if an individual other than the foreclosing attorney (or any employee of that attorney) is appointed as part of judicial proceedings, and local law also establishes the fees payable for the services of the public or judicially appointed trustee, then those fees will not be subject to the maximum established for legal fees under paragraph (b)(5)(ii) of this section and may be included in the total indebtedness.

* * * * *

■ 7. Amend § 36.4321 by adding paragraph (f) immediately before the authority citation at the end of the section to read as follows:

§ 36.4321 Computation of guaranty claims; subsequent accounting.

* * * * *

(f)(1)(i) Except as provided in paragraph (f)(1)(ii) of this section, a holder shall file a claim for payment under the guaranty no later than 1 year after the completion of the liquidation sale. For purposes of this section, the liquidation sale will be considered completed when:

(A) The last act required under State law is taken to make the liquidation sale final, but excluding any redemption period permitted under State law;

(B) If a holder accepts a voluntary conveyance of the property in lieu of foreclosure, the date of recordation of the deed to the holder or the holder's designee; or

(C) In the case of a sale of the property to a third party for an amount less than is sufficient to repay the unpaid balance on the loan where the holder has agreed in advance to release the lien in exchange for the proceeds of such sale, the date of settlement of such sale.

(ii) With respect to any liquidation sale completed prior to February 1, 2008, all claims must be submitted no later than February 2, 2009.

(2) If additional information becomes known to a holder after the filing of a guaranty claim, the holder may file a supplemental claim provided that such supplemental claim is filed within the time period specified in paragraph (f)(1) of this section.

(3) No claim under a guaranty shall be payable unless it is submitted within the time period specified in paragraph (f)(1) of this section.

(4) In the event that VA does not approve payment of any item submitted under a guaranty claim, VA shall notify the holder what items are being denied and the reasons for such denial. The holder may, within 30 days after the date of such denial notification, submit a request to VA that one or more items that were denied be reconsidered. The holder must present any additional information justifying payment of items denied.

* * * * *

■ 8. Add § 36.4344a to read as follows:

§ 36.4344a Servicer appraisal processing program (SAPP).

(a) Delegation of authority to servicers to review liquidation appraisals and determine reasonable value. Based on the reasonable value, the servicer will be able to determine net value.

(1) To be eligible for delegation of authority to review VA liquidation appraisals and determine the reasonable value for liquidation purposes on properties secured by VA guaranteed or insured loans, a lender must—

(i) Have automatic processing authority under 38 U.S.C. 3702(d), and

(ii) Employ one or more Staff Appraisal Reviewers (SAR) acceptable to the Secretary.

(2) To qualify as a servicer's staff appraisal reviewer an applicant must be a full-time member of the servicer's permanent staff and may not be employed by, or perform services for, any other mortgagee. The individual must not engage in any private pursuits in which there will be, or appear to be, any conflict of interest between those pursuits and his/her duties, responsibilities, and performance as a SAPP staff appraisal reviewer. Three years of appraisal related experience is necessary to qualify as a servicer's staff appraisal reviewer. That experience must demonstrate knowledge of, and the ability to apply industry-accepted principles, methods, practices and techniques of appraising, and the ability to competently determine the value of property. The individual must demonstrate the ability to review the work of others and to recognize deviations from accepted appraisal principle, practices, and techniques, error in computations, and unjustifiable and unsupportable conclusions.

(3) Servicers that have a staff appraisal reviewer determined acceptable to VA, will be authorized to review liquidation appraisals and make reasonable value determinations for liquidation purposes on properties that are the security for VA guaranteed or insured loans. Additionally, servicers must satisfy initial VA office case review requirements prior to being allowed to determine reasonable value without VA involvement. The initial office case review requirement must be satisfied in the VA regional loan center in whose jurisdiction the servicer's staff appraisal reviewer is located before the SAPP authority may be utilized by that servicer in any other VA office's jurisdiction. To satisfy the initial office case review requirement, the first five cases of each servicer staff appraisal reviewer involving properties in the regional office location where the staff appraisal reviewer is located will be processed by him or her up to the point where he or she has made a reasonable value determination and fully drafted, but not issued, the servicer's notice of value. At that point, and prior to loan termination, each of the five cases will be submitted to the VA regional loan center having jurisdiction over the property. After a staff review of each case, VA will issue a notice of value which the servicer may use to compute the net value of the property for liquidation purposes. If these five cases are found to be acceptable by VA, the servicer's staff appraisal reviewer will be allowed to fully process subsequent appraisals for properties regardless of jurisdictional location without prior submission to VA and issuance by VA of a notice of value. Where the servicer's reviewer cannot readily meet the jurisdictional review requirement, the SAR applicant may request that VA expand the geographic area of consideration. VA will accommodate such requests if practicable. The initial office case review requirement may be expanded by VA if acceptable performance has not been demonstrated. After satisfaction of the initial office case review requirement, routine reviews of SAPP cases will be made by VA staff based upon quality control procedures established by the Under Secretary for Benefits. Such review will be made on a random sampling or performance related basis.

(4) Certifications required from the servicer will be specified with particularity in the separate instructions issued by the Secretary, as noted in paragraph (b) of this section.

(b) *Instructions for SAPP Procedures.* The Secretary will publish separate instructions for processing appraisals under the Servicer Appraisal Processing Program. Compliance with these regulations and the separate instructions issued by the Secretary is deemed by VA to be the minimum exercise of due diligence in processing SAPP cases. Due diligence is considered by VA to represent that care, as is to be properly expected from, and ordinarily exercised by, a reasonable and prudent servicer who would be dependent on the property as security to protect its investment.

(c) *Adjustment of value recommendations.* The amount of authority to upwardly adjust the fee appraiser's estimated market value during the servicer staff appraisal reviewer's initial review of the appraisal report or to subsequently process an appeal of the servicer's established reasonable value will be specified in the separate instructions issued by VA as noted in § 36.4344a(b). The amount specified must not in any way be considered an administrative adjustment figure which may be applied indiscriminately and without valid basis or justification.

(1) *Adjustment during initial review.* Any adjustment during the staff appraisal reviewer's initial review of the appraisal report must be fully and clearly justified in writing on the appraisal report form or, if necessary, on an addendum. The basis for the adjustment must be adequate and reasonable by professional appraisal standards. If real estate market or other valid data was utilized in arriving at the decision to make the adjustment, such data must be attached to the appraisal report. All adjustments, comments, corrections, justifications, etc., to the appraisal report must be made in a contrasting color, be clearly legible, and signed and dated by the staff appraisal reviewer.

(2) *Processing appeals.* The authority provided under 38 U.S.C. 3731(d) which permits a lender to obtain a VA fee panel appraiser's report which VA is obligated to consider in an appeal of the established reasonable value shall not apply to cases processed under the authority provided by this section. All appeals of VA fee appraiser's estimated market values or servicer's reasonable value determinations above the amount specified in the separate instructions issued by VA must be submitted, along with the servicer's recommendations, if any, to VA for processing and final determination. Unless otherwise authorized in the separate instructions servicers must also submit appeals, regardless of the amount, to VA in all cases where the staff appraisal reviewer has made an adjustment during their initial review of the appraisal report to the fee appraiser's market value estimate. The fee appraiser's estimated market value or servicer's reasonable value determination may be increased only when such increase is clearly warranted and fully supported by real estate market or other valid data considered adequate and reasonable by professional appraisal standards and the servicer's staff appraisal reviewer clearly and fully justifies the reasoning and basis for the increase in writing on the appraisal report form or an addendum. The staff appraisal reviewer must date and sign the written justification and must cite within it the data used in arriving at the decision to make the increase. All such data shall be attached to the appraisal report form and any addendum.

(d) *Indemnification.* When the Secretary has incurred a loss as a result of a payment of claim under guaranty and in which the Secretary determines an increase made by the servicer under paragraph (c) of this section was unwarranted, or arbitrary and capricious, the lender shall indemnify the Secretary to the extent the Secretary determines such loss was caused or increased, by the increase in value.

(e) *Affiliations.* A servicer affiliated with a real estate firm, builder, land developer or escrow agent as a subsidiary division, or in any other entity in which it has a financial interest or which it owns may not use the authority for any cases involving the affiliate unless the servicer demonstrates to the Secretary's

satisfaction that the servicer and its affiliate(s) are essentially separate entities that operate independently of each other, free of all cross-influences (*e.g.*, a formal corporate agreement exists which specifically sets forth this fact).

(f) *Quality control plans.* The servicer must have an effective self-policing or quality control system to ensure the adequacy and quality of their SAPP staff appraisal reviewer's processing and, that its activities do not deviate from high standards of integrity. The quality control system must include frequent, periodic audits that specifically address the appraisal review activity. These audits may be performed by an independent party, or by the servicer's independent internal audit division which reports directly to the firm's chief executive officer. The servicer must agree to furnish findings and information under this system to VA on demand. While the quality control personnel need not be appraisers, they should have basic familiarity with appraisal theory and techniques and the ability to prescribe appropriate corrective action(s) in the appraisal review process when discrepancies or problems are identified. The basic elements of the system will be described in separate instructions issued by the Secretary. Copies of the lender's quality control plan or self-policing system evidencing appraisal related matters must be provided to the VA office of jurisdiction with the servicer's application of SAPP authority.

(g) *Fees.* The Secretary will require servicers to pay a $100.00 application fee for each SAR the servicer nominates for approval. The application fee will also apply if the SAR begins work for another servicer.

(h) *Withdrawal of servicer authority.* The authority for a servicer to determine reasonable value may be withdrawn by the Loan Guaranty Officer when proper cause exists. A servicer's authority to make reasonable value determinations shall be withdrawn when the servicer no longer meets the basic requirements for delegating the authority, or when it can be shown that the servicer's reasonable value determinations have not been made in accordance with VA regulations, requirements, guidelines, instructions or applicable laws, or when there is adequate evidence to support reasonable belief by VA that a particular unacceptable act, practice, or performance by the servicer or the servicer's staff has occurred. Such acts, practices, or performance include, but are not limited to: Demonstrated technical incompetence (i.e., conduct which demonstrates an insufficient knowledge of industry accepted appraisal principles, techniques and practices; or the lack of technical competence to review appraisal reports and make value determinations in accordance with those requirements); substantive or repetitive errors (i.e., any error(s) of a nature that would materially or significantly affect the determination of reasonable value or condition of the property; or a number or series of errors that, considered individually, may not significantly impact the determination of reasonable value or property condition, but which when considered in the aggregate would establish that appraisal reviews or SAPP case processing are being performed in a careless or negligent manner), or continued instances of disregard for VA requirements after they have been called to the servicer's attention.

(1) Withdrawal of authority by the Loan Guaranty Officer may be either for an indefinite or a specified period of time. For any withdrawal longer than 90 days a reapplication for servicer authority to process appraisals under these regulations will be required. Written notice will be provided at least 30 days in advance of withdrawal unless the Government's interests are exposed to immediate risk from the servicer's activities in which case the withdrawal will be effected immediately. The notice will clearly and specifically set forth the basis and grounds for the action. There is no right to a formal hearing to contest the withdrawal of SAPP processing privileges. However, if within 15 days after receiving notice the servicer requests an opportunity to contest the withdrawal, the servicer may submit, in person, in writing, or through a representative, information and argument to the Loan Guaranty Officer in opposition to the withdrawal. The Loan Guaranty Officer will make a recommendation to the Regional Loan Center Director who shall make the determination as to whether the action should be sustained, modified or rescinded. The servicer will be informed in writing of the decision.

(2) The servicer has the right to appeal the Regional Loan Center Director's decision to the Undersecretary for Benefits. In the event of such an appeal, the Under Secretary for Benefits will review all relevant material concerning the matter and make a determination that shall constitute final agency action. If the servicer's submission of opposition raises a genuine dispute over facts material to the withdrawal of SAPP authority, the servicer will be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses and confront any witness the Veterans Benefits Administration presents. The Under Secretary for Benefits will appoint a hearing officer or panel to conduct the hearing. When such additional proceedings are necessary, the Under Secretary for Benefits shall base the determination on the facts as found, together with any information and argument submitted by the servicer.

(3) In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the Under Secretary for Benefits shall make a decision on the basis of all the information in the administrative record, including any submission made by the servicer.

(4) Withdrawal of the SAPP authority will require that VA make subsequent determinations of reasonable value for the servicer. Consequently, VA staff will review each appraisal report and issue a Notice of Value which can then be used by the servicer to compute the net value of properties for liquidation purposes.

(5) Withdrawal by VA of the servicer's SAPP authority does not prevent VA from also withdrawing automatic processing authority or taking debarment or suspension action based upon the same conduct of the servicer.

(Authority: 38 U.S.C. 3731)

■ 9. Remove the undesignated center heading preceding § 36.4400 and the authority citation directly below that center heading.

■ 10. A heading for subpart C is added preceding § 36.4400 to read as follows:

Subpart C—Assistance to Certain Disabled Veterans in Acquiring Specially Adapted Housing

* * * * *

■ 11. Remove the undesignated center heading preceding § 36.4500 and the authority citation directly below that center heading.

■ 12. A heading for subpart D is added preceding § 36.4500 to read as follows:

Subpart D—Direct Loans

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■ 13. Remove the undesignated center heading preceding § 36.4600 and the authority citation directly below that center hearing.

■ 14. A heading for subpart E is added preceding § 36.4600 to read as follows:

Subpart E—Sale of Loans, Guarantee of Payment, and Flood Insurance

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■ 15. Add subpart F to read as follows:

Subpart F—Guaranty or Insurance of Loans to Veterans With Electronic Reporting

Sec.
36.4800 Applicability of this subpart.
36.4801 Definitions.
36.4802 Computation of guaranties or insurance credits.
36.4803 Reporting requirements.
36.4804 Deviations; changes of identity.
36.4805 Partial disbursement.
36.4806 Refinancing of mortgage or other lien indebtedness.
36.4807 Interest rate reduction refinancing loan.
36.4808 Joint loans.
36.4809 Transfer of title by borrower or maturity by demand or acceleration.
36.4810 Amortization.
36.4811 Prepayment.
36.4812 Interest rates.
36.4813 Charges and fees.
36.4814 Advances and other charges.
36.4815 Loan modifications.
36.4816 Acceptability of partial payments.
36.4817 Servicer reporting requirements.
36.4818 Servicer tier ranking—temporary procedures.
36.4819 Servicer loss-mitigation options and incentives.
36.4820 Refunding of loans in default.
36.4821 Service of process.
36.4822 Loan termination.
36.4823 Election to convey security.
36.4824 Guaranty claims; subsequent accounting.
36.4825 Computation of indebtedness.
36.4826 Subrogation and indemnity.
36.4827 Release of security.
36.4828 Partial or total loss of guaranty or insurance.
36.4829 Hazard insurance.
36.4830 Substitution of trustees.
36.4831 Capacity of parties to contract.
36.4832 Geographical limits.
36.4833 Maintenance of records.
36.4835 Delivery of notice.
36.4836 [Reserved].
36.4837 Conformance of loan instruments.
36.4838 Supplementary administrative action.
36.4839 Eligibility of loans; reasonable value requirements.
36.4840 Underwriting standards, processing procedures, lender responsibility, and lender certification.
36.4841 Death or insolvency of holder.
36.4842 Qualification for designated fee appraisers.
36.4843 Restriction on designated appraisers.
36.4845 Delegation of authority.
36.4846 Cooperative loans.
36.4847 Lender appraisal processing program.
36.4848 Servicer appraisal processing program.
36.4849 Waivers, consents, and approvals; when effective.
36.4850 Servicing procedures for holders.
36.4851 Minimum property and construction requirements.
36.4852 Authority to close loans on the automatic basis.
36.4853 Withdrawal of authority to close loans on the automatic basis.
36.4854 Estate of veteran in real property.
36.4855 Loans, first, second, or unsecured.
36.4856 Tax, special assessment and other liens.
36.4857 Combination residential and business property.
36.4858 [Reserved]
36.4859 Supplemental loans.
36.4860 Condominium loans.
36.4861 Acceptable ownership arrangements and documentation.
36.4862 Rights and restrictions.
36.4863 Miscellaneous legal requirements.
36.4864 Documentation and related requirements-flexible condominiums and condominiums with offsite facilities.
36.4865 Appraisal requirements.
36.4867 Requirement of construction warranty.
36.4868 Nondiscrimination and equal opportunity in housing certification requirements.
36.4869 Correction of structural defects.
36.4870 Advertising and solicitation requirements.
36.4875 Insured loan and insurance account.
36.4877 Transfer of insured loans.
36.4878 Debits and credits to insurance account under § 36.4820.
36.4879 Payment of insurance.
36.4880 Reports of insured institutions.
36.4890 Purpose.
36.4891 Applicability.
36.4892 Certification requirements.
36.4893 Complaint and hearing procedure.

Subpart F—Guaranty or Insurance of Loans to Veterans With Electronic Reporting

§ 36.4800 Applicability of this subpart.

(a) This subpart applies to loans serviced by a mortgage servicing industry segment on or after the date that VA issues a **Federal Register** notice making this subpart applicable to that segment. This includes loans entitled to an automatic guaranty, or otherwise guaranteed or insured, on or after the date assigned in the **Federal Register**, and loans that were previously guaranteed or insured to the extent that no legal rights vested under the regulations are impaired.

(b) Title 38 U.S.C., chapter 37, is a continuation and restatement of the provisions of Title III of the Servicemen's Readjustment Act of 1944, and may be considered an amendment to such Title III. References to the sections or chapters of title 38 U.S.C., shall, where applicable, be deemed to refer to the prior corresponding provisions of the law.

(Authority: 38 U.S.C. 3703(c)(1))

§ 36.4801 Definitions.

Whenever used in 38 U.S.C. chapter 37 or subpart F of this part, unless the context otherwise requires, the terms defined in this section shall have the following meaning:

A period of more than 180 days. For the purposes of sections 3707 and 3702(a)(2)(C) of title 38 U.S.C., the term a period of more than 180 days shall mean 181 or more calendar days of continuous active duty.

Acquisition and improvement loan. A loan to purchase an existing property which includes additional funds for the purpose of installing energy conservation improvements or making other alterations, improvements, or repairs.

(Authority: 38 U.S.C. 3703(c)(1), 3710(a)(1), (4), and (7))

Alterations. Any structural changes or additions to existing improved realty.

Automatic lender. A lender that may process a loan or assumption without submitting the credit package to the Department of Veterans Affairs for underwriting review. Pursuant to 38 U.S.C. 3702(d) there are two categories of lenders who may process loans automatically:

(1) Entities such as banks, savings and loan associations, and mortgage and loan companies that are subject to examination by an agency of the United States or any State and

(2) Lenders approved by the Department of Veterans Affairs pursuant to standards established by the Department of Veterans Affairs.

(Authority: 38 U.S.C. 3702(d))

Compromise sale. A sale to a third party for an amount less than is sufficient to repay the unpaid balance on the loan where the holder has agreed in advance to release the lien in exchange for the proceeds of such sale.

Condominium. Unless otherwise provided by State law, a condominium is a form of ownership where the buyer receives title to a three dimensional air space containing the individual living unit together with an undivided interest or share in the ownership of common elements.

Cost. Cost means the entire consideration paid or payable for or on account of the application of materials and labor to tangible property.

Credit package. Any information, reports or verifications used by a lender, holder or authorized servicing agent to determine the creditworthiness of an applicant for a Department of Veterans Affairs guaranteed loan or the assumer of such a loan.

(Authority: 38 U.S.C. 3710 and 3714)

Date of first uncured default. Date of first uncured default means the due date of the earliest payment not fully satisfied by the proper application of available credits or deposits.

Default. Default means failure of a borrower to comply with the terms of a loan agreement.

Designated appraiser. Designated appraiser means a person requested by the Secretary to render an estimate of the reasonable value of a property, or of a specified type of property, within a stated area for the purpose of justifying the extension of credit to an eligible veteran for any of the purposes stated in 38 U.S.C. chapter 37. An appraiser on a fee basis is not an agent of the Secretary.

Discharge or release. For purposes of basic eligibility a person will be considered discharged or released if the veteran was issued a discharge certificate under conditions other than dishonorable (38 U.S.C. 3702(c)). The term discharge or release includes—

(1) Retirement from the active military, naval, or air service, and

(2) The satisfactory completion of the period of active military, naval, or air service for which a person was obligated at the time of entry into such service in the case of a person who, due to enlistment or reenlistment, was not awarded a discharge or release from such period of service at the time of such completion thereof and who, at such time, would otherwise have been eligible for the award of a discharge or release under conditions other than dishonorable.

(Authority: 38 U.S.C. 101(18))

Dwelling. Any building designed primarily for use as a home consisting of not more than four family units plus an added unit for each veteran if more than one eligible veteran participates in the ownership, except that in the case of a condominium housing development or project within the purview of 38 U.S.C. 3710(a)(6) and §§ 36.4860 through 36.4865 of this part the term is limited to a one single-family residential unit. Also, a manufactured home, permanently affixed to a lot owned by a veteran and classified as real property under the laws of the State where it is located.

(Authority: 38 U.S.C. 3710(a) and (f))

Economic readjustment. Economic readjustment means rearrangement of an eligible veteran's indebtedness in a manner calculated to enable the veteran to meet obligations and thereby avoid imminent loss of the property which secures the delinquent obligation.

Energy conservation improvement. An improvement to an existing dwelling or farm residence through the installation of a solar heating system, a solar heating and cooling system, or a combined solar heating and cooling system or through application of a residential energy conservation measure as prescribed in 38 U.S.C. 3710(d) or by the Secretary.

(Authority: 38 U.S.C. 3710(a)(7))

Full disbursement. Payment by a lender of the entire proceeds of a loan or the purposes described in the report of the lender in respect of such loan to the Secretary either:

(1) By payment to those contracting with the borrower for such purposes, or

(2) By payment to the borrower, or

(3) By transfer to an account against which the borrower can draw at will, or

(4) By transfer to an escrow account, or

(5) By transfer to an earmarked account if

(i) The amount is not in excess of 10 percent of the loan, or

(ii) The loan is an Acquisition and Improvement loan pursuant to § 36.4801, or

(iii) The loan is one submitted by a lender of the class specified in 38 U.S.C. 3702(d) or 3703(a)(2).

(Authority: 38 U.S.C. 3703(c)(1))

Graduated payment mortgage loan. A loan for the purpose of acquiring a single-family dwelling unit involving a plan for repayment in which a portion of the interest due is deferred for a period of time. The interest so deferred is added to the principal balance thus resulting in a principal amount greater than at loan origination (negative amortization). The monthly payments increase on an annual basis (graduate) for a predetermined period of time until the payments reach a level which will fully amortize the loan during the remaining loan term.

(Authority: 38 U.S.C. 3703(c) and (d))

Guaranty. Guaranty means the obligation of the United States, assumed by virtue of 38 U.S.C. chapter 37, to repay a specified percentage of a loan upon the default of the primary debtor.

Holder. The lender or any subsequent assignee or transferee of the guaranteed obligation or the authorized servicing agent (also referred to as ''the servicer'') of the lender or of the assignee or transferee.

(Authority: 38 U.S.C. 3714)

Home. Home means place of residence.

Improvements. Any alteration that improves the property for the purpose for which it is occupied.

Insurance. Insurance means the obligation assumed by the United States to indemnify a lender to the extent specified in this subpart for any loss incurred upon any loan insured under 38 U.S.C. 3703(a)(2).

Insurance account. Insurance account means the record of the amount available to a lender or purchaser for losses incurred on loans insured under 38 U.S.C. 3703(a).

Lender. The payee or assignee or transferee of an obligation at the time it is guaranteed or insured. This term also includes any sole proprietorship, partnership, or corporation and the owners, officers and employees of a sole proprietorship, partnership, or corporation engaged in the origination, procurement, transfer, servicing, or funding of a loan which is guaranteed or insured by VA.

(Authority: 38 U.S.C. 3703(c)(1) and 3704(d))

Lien. Lien means any interest in, or power over, real or personal property, reserved by the vendor, or created by the parties or by operation of law, chiefly or solely for the purpose of assuring the payment of the purchase price, or a debt, and irrespective of the identity of the party in whom title to the property is vested, including but not limited to mortgages, deeds with a defeasance therein or collaterally, deeds of trust, security deeds, mechanics' liens, lease-purchase contracts, conditional sales contracts, consignments.

Liquidation sale. Any judicial, contractual or statutory disposition of real property, under the terms of the loan instruments and applicable law, to liquidate a defaulted loan that is secured by such property. This includes a voluntary conveyance made to avoid such disposition of the obligation or of the security. This term also includes a compromise sale.

(Authority: 38 U.S.C. 3732)

Lot. A parcel of land acceptable to the Secretary as a manufactured home site.

(Authority: 38 U.S.C. 3710(a)(9))

Manufactured home. A moveable dwelling unit designed and constructed for year-round occupancy by a single family, on land, containing permanent eating, cooking, sleeping and sanitary facilities. A double-wide manufactured home is a moveable dwelling designed for occupancy by one family and consisting of:

(1) Two or more units intended to be joined together horizontally when located on a site, but capable of independent movement or

(2) A unit having a section or sections which unfold along the entire length of the unit. For the purposes of this section of VA regulations, manufactured home/lot loans guaranteed under the purview of §§ 36.4800 through 36.4893 must be for units permanently affixed to a lot and considered to be real property under the laws of the State where it is located. If the loan is for the purchase

of a manufactured home and lot it must be considered as one loan.

(Authority: 38 U.S.C. 3710(a)(9))

Net loss (insured loans). Net loss on insured loans means the indebtedness, plus any other charges authorized under § 36.4814, remaining unsatisfied after the liquidation of all available security and recourse to all intangible rights of the holder against those obligated on the debt.

Net value. The fair market value of real property, minus an amount representing the costs that the Secretary estimates would be incurred by VA in acquiring and disposing of the property. The number to be subtracted from the fair market value will be calculated by multiplying the fair market value by the current cost factor. The cost factor used will be the most recent percentage of the fair market value that VA calculated and published in the Notices section of the **Federal Register** (it is intended that this percentage will be calculated annually). In computing this cost factor, VA will determine the average operating expenses and losses (or gains) on resale incurred for properties acquired under § 36.4823 which were sold during the preceding fiscal year and the average administrative cost to VA associated with the property management activity. The final net value derived from this calculation will be stated as a whole dollar amount (any fractional amount will be rounded up to the next whole dollar). The cost items included in the calculation will be:

(1) *Property operating expenses.* All disbursements made for payment of taxes, assessments, liens, property maintenance and related repairs, management broker's fees and commissions, and any other charges to the property account excluding property improvements and selling expenses.

(2) *Selling expenses.* All disbursements for sales commissions plus any other costs incurred and paid in connection with the sale of the property.

(3) *Administrative costs.* (i) An estimate of the total cost for VA of personnel (salary and benefits) and overhead (which may include things such as travel, transportation, communication, utilities, printing, supplies, equipment, insurance claims and other services) associated with the acquisition, management and disposition of property acquired under § 36.4823 of this part. The average administrative costs will be determined by:

(A) Dividing the total cost for VA personnel and overhead salary and benefits costs by the average number of properties on hand and adjusting this figure based on the average holding time for properties sold during the preceding fiscal year; and

(B) Dividing the figure calculated in paragraph (3)(i)(A) of this definition by the VBA ratio of personal services costs to total obligations.

(ii) The three cost averages will be added to the average loss (or gain) on property sold during the preceding fiscal year (based on the average property purchase price) and the sum will be divided by the average fair market value at the time of acquisition for properties which were sold during the preceding fiscal year to derive the percentage to be used in estimating net value.

(Authority: 38 U.S.C. 3732)

Purchase price. The entire legal consideration paid or payable upon or on account of the sale of property, exclusive of acquisition costs, or for the cost of materials and labor to be applied to the property.

Real-estate loan. Any obligation incurred for the purchase of real property or a leasehold estate as limited in §§ 36.4800 through 36.4893 or for the construction of fixtures or appurtenances thereon or for alterations, improvements, or repairs thereon required by §§ 36.4800 through 36.4893 to be secured by a lien on such property or is so secured. Loans for the purpose specified in 38 U.S.C. 3710(a)(5) (refinancing of mortgage loans or other liens on a dwelling or farm residence), loans for the purpose specified in 38 U.S.C. 3710(a)(8) (refinancing of a VA guaranteed, insured or direct loan to lower the interest rate), loans for the purposes specified in 38 U.S.C. 3710(a)(9) (purchase of manufactured homes/lots or the refinancing of such loans in order to reduce the interest rate or purchase a lot, in States in which manufactured homes, when permanently affixed to a lot, are considered real property, and loans to purchase one-family residential units in condominium housing developments or projects within the purview of 38 U.S.C. 3710(a)(6) and §§ 36.4860 through 36.4865 shall also be considered real estate loans.

Reasonable value. Reasonable value means that figure which represents the amount a reputable and qualified appraiser, unaffected by personal interest, bias, or prejudice, would recommend to a prospective purchaser as a proper price or cost in the light of prevailing conditions.

Registered mail. The term registered mail wherever used in the regulations concerning guaranty or insurance of loans to veterans shall include certified mail.

Repairs. Any alteration of existing improved realty or equipment which is necessary or advisable for protective, safety or restorative purposes.

Repayment plan. A repayment plan is a written executed agreement by and between the borrower and the holder to reinstate a loan that is 61 or more calendar days delinquent, by requiring the borrower to pay each month over a fixed period (minimum of three months duration) the normal monthly payments plus an agreed upon portion of the delinquency each month.

Repossession. Repossession means recovery or acquisition of such physical control of property (pursuant to the provisions of the security instrument or as otherwise provided by law) as to make further legal or other action unnecessary in order to obtain actual possession of the property or to dispose of the same by sale or otherwise.

Residential property.

(1) Any one-family residential unit in a condominium housing development within the purview of 38 U.S.C. 3710(a)(6) and §§ 36.4860 through 36.4865;

(2) Any manufactured home permanently affixed to a lot owned or being purchased by a veteran and considered to be real property under the laws of the State where it is located;

(3) Any improved real property (other than a condominium housing development or a manufactured home and/or lot) or leasehold estate therein as limited by this subpart, the primary use of which is for occupancy as a home, consisting of not more than four family units, plus an added unit for each eligible veteran if more than one participates in the ownership thereof; or

(4) Any land to be purchased out of the proceeds of a loan for the construction of a dwelling, and on which such dwelling is to be erected.

(Authority: 38 U.S.C. 3703(c)(1) and 3710(a))

Secretary. The Secretary of Veterans Affairs, or any employee of the Department of Veterans Affairs authorized to act in the Secretary's stead.

Servicer. The authorized servicer is either:

(1) The servicing agent of a holder; or

(2) The holder itself, if the holder is performing all servicing functions on a loan. The servicer is typically the entity reporting all loan activity to VA and filing claims under the guaranty on behalf of the holder. VA will generally issue guaranty claims and other payments to the servicer, who will be responsible for forwarding funds to the

holder in accordance with its servicing agreement. Incentives under § 36.4819 will generally be paid directly to the servicer based on its performance under that section and in accordance with its tier ranking under § 36.4818.

Servicing agent. An agent designated by the loan holder as the entity to collect installments on the loan and/or perform other functions as necessary to protect the interests of the holder.

(Authority: 38 U.S.C. 3714)

Special forbearance. This is a written agreement executed by and between the holder and the borrower where the holder agrees to suspend all payments or accept reduced payments for one or more months, on a loan 61 or more calendar days delinquent, and the borrower agrees to pay the total delinquency at the end of the specified period or enter into a repayment plan.

Total indebtedness: For purposes of 38 U.S.C. 3732(c), the veteran's ''total indebtedness'' shall be the sum of: the unpaid principal on the loan as of the date of the liquidation sale, accrued unpaid interest permitted by § 36.4824(a) of this part, and allowable advances/other charges permitted to be included in the guaranty claim by § 36.4814 of this part.

(Authority: 38 U.S.C. 3703(c)(1))

§ 36.4802 Computation of guaranties or insurance credits.

(a) With respect to a loan to a veteran guaranteed under 38 U.S.C. 3710 the guaranty shall not exceed the lesser of the dollar amount of entitlement available to the veteran or—

(1) 50 percent of the original principal loan amount where the loan amount is not more than $45,000; or

(2) $22,500 where the original principal loan exceeds $45,000, but is not more than $56,250; or

(3) Except as provided in paragraph (a)(4) of this section, the lesser of $36,000 or 40 percent of the original principal loan amount where the loan amount exceeds $56,250; or

(4) The lesser of $60,000 or 25 percent of the original principal loan amount where the loan amount exceeds $144,000 and the loan is for the purchase or construction of a home or the purchase of a condominium unit.

(b) With respect to an interest rate reduction refinancing loan guaranteed under 38 U.S.C. 3710(a)(8), (a)(9)(B)(i), or (a)(11), the dollar amount of guaranty may not exceed the greater of the original guaranty amount of the loan being refinanced, or 25 percent of the refinancing loan amount.

(Authority: 38 U.S.C. 3703, 3710)

(c) With respect to a loan for an energy efficient mortgage guaranteed under 38 U.S.C. 3710(d), the amount of the guaranty shall be in the same proportion as would have been provided if the energy efficient improvements were not added to the loan amount, and there shall be no additional charge to the veteran's entitlement as a result of the increased guaranty amount.

(Authority: 38 U.S.C. 3703, 3710)

(d) An amount equal to 15 percent of the original principal amount of each insured loan shall be credited to the insurance account of the lender and shall be charged against the guaranty entitlement of the borrower: Provided, That no loan may be insured unless the borrower has sufficient entitlement remaining to permit such credit.

(e) Subject to the provisions of § 36.4803(g), the following formulas shall govern the computation of the amount of the guaranty or insurance entitlement which remains available to an eligible veteran after prior use of entitlement:

(1) If a veteran previously secured a nonrealty (business) loan, the amount of nonrealty entitlement used is doubled and subtracted from $36,000. The sum remaining is the amount of available entitlement for use, except that:

(i) Entitlement may be increased by up to $24,000 if the loan amount exceeds $144,000 and the loan is for purchase or construction of a home or purchase of a condominium; and

(ii) Entitlement for manufactured home loans that are to be guaranteed under 38 U.S.C. 3712 may not exceed $20,000.

(2) If a veteran previously secured a realty (home) loan, the amount of realty (home) loan entitlement used is subtracted from $36,000. The sum remaining is the amount of available entitlement for use, except that:

(i) Entitlement may be increased by up to $24,000 if the loan amount exceeds $144,000 and the loan is for purchase or construction of a home or purchase of a condominium; and

(ii) Entitlement for manufactured home loans that are to be guaranteed under 38 U.S.C. 3712 may not exceed $20,000.

(3) If a veteran previously secured a manufactured home loan under 38 U.S.C. 3712, the amount of entitlement used for that loan is subtracted from $36,000. The sum remaining is the amount of available entitlement for home loans and the sum remaining may be increased by up to $24,000 if the loan amount exceeds $144,000 and the loan is for purchase or construction of a home or purchase of a condominium. To determine the amount of entitlement available for manufactured home loans processed under 38 U.S.C. 3712, the amount of entitlement previously used for that purpose is subtracted from $20,000. The sum remaining is the amount of available entitlement for use for manufactured home loan purposes under 38 U.S.C. 3712.

(Authority: 38 U.S.C. 3703)

(f) For the purpose of computing the remaining guaranty or insurance benefit to which a veteran is entitled, loans guaranteed prior to February 1, 2008 shall be taken into consideration as if made subsequent thereto.

(g) A loan eligible for insurance may be either guaranteed or insured at the option of the borrower and the lender, provided that if the Secretary is not advised of the exercise of such option at the time the loan is reported pursuant to § 36.4803, such loan will not be eligible for insurance.

(h) A guaranty is reduced or increased pro rata with any deduction or increase in the amount of the guaranteed indebtedness, but in no event will the amount payable on a guaranty exceed the amount of the original guaranty, except where the guaranty has been increased under § 36.4815, or the percentage of the total indebtedness corresponding to that of the original guaranty whichever is less. However, on a graduated payment mortgage loan, the percentage of guaranty applicable to the original loan amount pursuant to paragraph (a) of this section shall apply to the loan indebtedness to the extent scheduled deferred interest is added to principal during the graduation period without regard to the original maximum dollar amount of guaranty.

(Authority: 38 U.S.C. 3703(b) and (d))

(i) The amount of any guaranty or the amount credited to a lender's insurance account in relation to any insured loan shall be charged against the original or remainder of the guaranty benefit of the borrower. Complete or partial liquidation, by payment or otherwise, of the veteran's guaranteed or insured indebtedness does not increase the remainder of the guaranty benefit, if any, otherwise available to the veteran. When the maximum amount of guaranty or insurance legally available to a veteran shall have been granted, no further guaranty or insurance is available to the veteran.

(j) Notwithstanding the provisions of paragraph (i) of this section, in computing the aggregate amount of guaranty or insurance housing loan entitlement available to a veteran under

this chapter, the Secretary may exclude the amount of guaranty or insurance housing loan entitlement used for any guaranteed, insured, or direct loan under any one of the following circumstances:

(1)(i) The property which secured the loan has been disposed of by the veteran or has been destroyed by fire or other natural hazard; and

(ii) The loan has been repaid in full; or, the Secretary has been released from liability as to the loan; or, if the Secretary has suffered a loss on such loan, the loss has been paid in full.

(2) A veteran-transferee has agreed to assume the outstanding balance on the loan and consented to the use of the veteran-transferee's entitlement, to the extent that the entitlement of the veteran-transferor had been used originally, in place of the veteran-transferor's for the guaranteed, insured, or direct loan, and the veteran-transferee otherwise meets the requirements of this chapter.

(3)(i) The loan has been repaid in full; and

(ii) The loan for which the veteran seeks to use entitlement under this chapter is secured by the same property which secured the loan referred to in the preceding paragraph (j)(3)(i) of this paragraph.

(4) In a case not covered by (j)(1) or (j)(2) of this section, the Secretary may, one time per veteran, exclude entitlement used if:

(i) The loan has been repaid in full and, if the Secretary has suffered a loss on the loan, the loss has been paid in full; or

(ii) The Secretary has been released from liability as to the loan and, if the Secretary has suffered a loss on the loan, the loss has been paid in full.

(k) The Secretary may, in any case involving circumstances that the Secretary deems appropriate, waive one or more of the requirements set forth in paragraph (j)(1) of this section.

(Authority: 38 U.S.C. 3702(b), 3710)

(l)(1) The amount of guaranty entitlement, available and unused, of an eligible unmarried surviving spouse (whose eligibility does not result from his or her own service) is determinable in the same manner as in the case of any veteran, and any entitlement which the decedent (who was his or her spouse) used shall be disregarded. A certificate as to the eligibility of such surviving spouse, issued by the Secretary, shall be a condition precedent to the guaranty or insurance of any loan made to a surviving spouse in such capacity.

(Authority: 38 U.S.C. 3701(a))

(2) An unmarried surviving spouse who was a co-obligor under an existing VA guaranteed, insured or direct loan shall be considered to be a veteran eligible for an interest rate reduction refinancing loan pursuant to 38 U.S.C. 3710(a)(8) or (9)(B)(i).

(Authority: 38 U.S.C. 3710(e)(3), 3703(c)(1))

§ 36.4803 Reporting requirements.

(a) With respect to loans automatically guaranteed under 38 U.S.C. 3703(a)(1), evidence of the guaranty will be issuable to a lender of a class described under 38 U.S.C. 3702(d) if the loan is reported to the Secretary not later than 60 days following full disbursement and upon the certification of the lender that:

(1) No default exists thereunder that has continued for more than 30 days;

(2) Except for acquisition and improvement loans as defined in § 36.4801, any construction, repairs, alterations, or improvements effected subsequent to the appraisal of reasonable value, and paid for out of the proceeds of the loan, which have not been inspected and approved upon completion by a compliance inspector designated by the Secretary, have been completed properly in full accordance with the plans and specifications upon which the original appraisal was based; and any deviations or changes of identity in said property have been approved as required in § 36.4804 concerning guaranty or insurance of loans to veterans;

(3) The loan conforms otherwise with the applicable provisions of 38 U.S.C. chapter 37 and of the regulations concerning guaranty or insurance of loans to veterans.

(Authority: 38 U.S.C. 3703(c)(1))

(b) Loans made pursuant to 38 U.S.C. 3703(a), although not entitled to automatic insurance thereunder, may, when made by a lender of a class described in 38 U.S.C. 3702(d)(1), be reported for issuance of an insurance credit.

(Authority: 38 U.S.C. 3702(d), 3703(a)(2))

(c) Each loan proposed to be made to an eligible veteran by a lender not within a class described in 38 U.S.C. 3702(d) shall be submitted to the Secretary for approval prior to closing. Lenders described in 38 U.S.C. 3702(d) shall have the optional right to submit any loan for such prior approval. The Secretary, upon determining any loan so submitted to be eligible for a guaranty, or for insurance, will issue a certificate of commitment with respect thereto.

(d) A certificate of commitment shall entitle the holder to the issuance of the evidence of guaranty or insurance upon the ultimate actual payment of the full proceeds of the loan for the purposes described in the original report and upon the submission within 60 days thereafter of a supplemental report showing that fact and:

(1) The identity of any property purchased therewith,

(2) That all property purchased or acquired with the proceeds of the loan has been encumbered as required by the regulations concerning guaranty or insurance of loans to veterans,

(3) Except for acquisition and improvement loans as defined in § 36.4801(c), any construction, repairs, alterations, or improvements paid for out of the proceeds of the loan, which have not been inspected and approved subsequent to completion by a compliance inspector designated by the Secretary, have been completed properly in full accordance with the plans and specifications upon which the original appraisal was based; and that any deviations or changes of identity in said property have been approved as required by § 36.4804, and

(4) That the loan conforms otherwise with the applicable provisions of 38 U.S.C. chapter 37 and the regulations concerning guaranty or insurance of loans to veterans.

(Authority: 38 U.S.C. 3703(c)(1))

(e) Upon the failure of the lender to report in accordance with the provisions of paragraph (d) of this section, the certificate of commitment shall have no further effect, or the amount of guaranty or insurance shall be reduced pro rata, as may be appropriate under the facts of the case: *Provided*, nevertheless, that if the loan otherwise meets the requirements of this section, said certificate of commitment may be given effect by the Secretary, notwithstanding the report is received after the date otherwise required.

(f) For loans not reported within 60 days, evidence of guaranty will be issued only if the loan report is accompanied by a statement signed by a corporate officer of the lending institution which explains why the loan was reported late. The statement must identify the case or cases in issue and must set forth the specific reason or reasons why the loan was not submitted on time. Upon receipt of such a statement evidence of guaranty will be issued. A pattern of late reporting and the reasons therefore will be considered by VA in taking action under § 36.4853.

(g) Evidence of a guaranty will be issued by the Secretary by appropriate endorsement on the note or other instrument evidencing the obligation, or

by a separate certificate at the option of the lender. Notice of credit to an insurance account will be given to the lender. Unused certificates of eligibility issued prior to March 1, 1946, are void. No certificate of commitment shall be issued and no loan shall be guaranteed or insured unless the lender, the veteran, and the loan are shown to be eligible. Evidence of guaranty or insurance will not be issued on any loan for the purchase or construction of residential property unless the veteran, or the veteran's spouse in the case of a veteran who cannot occupy the property because of active duty status with the Armed Forces, certifies in such form as the Secretary shall prescribe that the veteran, or spouse of the active duty veteran, intends to occupy the property as his or her home. Guaranty or insurance evidence will not be issued on any loan for the alteration, improvement, or repair of any residential property or on a refinancing loan unless the veteran, or spouse of an active duty servicemember, certifies that he or she presently occupies the property as his or her home. An exception to this is if the home improvement or refinancing loan is for extensive changes to the property that will prevent the veteran or the spouse of the active duty veteran from occupying the property while the work is being completed. In such a case the veteran or spouse of the active duty veteran must certify that he or she intends to occupy or reoccupy the property as his or her home upon completion of the substantial improvements or repairs. All of the mentioned certifications must take place at the time of loan application and closing except in the case of loans automatically guaranteed, in which case veterans or, in the case of an active duty veteran, the veteran's spouse shall make the required certification only at the time the loan is closed.

(Authority: 38 U.S.C. 3704(c))

(h) Subject to compliance with the regulations concerning guaranty or insurance of loans to veterans, the certificate of guaranty or the evidence of insurance credit will be issuable within the available entitlement of the veteran on the basis of the loan stated in the final loan report or certification of loan disbursement, except for refinancing loans for interest rate reductions. The available entitlement of a veteran will be determined by the Secretary as of the date of receipt of an application for guaranty or insurance of a loan or of a loan report. Such date of receipt shall be the date the application or loan report is date-stamped into VA. Eligibility derived from the most recent period of service:

(1) Shall cancel any unused entitlement derived from any earlier period of service, and

(2) Shall be reduced by the amount by which entitlement from service during any earlier period has been used to obtain a direct, guaranteed, or insured loan:

(i) On property which the veteran owns at the time of application, or

(ii) As to which the Secretary has incurred actual liability or loss, unless in the event of loss or the incurrence and payment of such liability by the Secretary, the resulting indebtedness of the veteran to the United States has been paid in full. *Provided*, that if the Secretary issues or has issued a certificate of commitment covering the loan described in the application for guaranty or insurance or in the loan report, the amount and percentage of guaranty or the amount of the insurance credit contemplated by the certificate of commitment shall not be subject to reduction if the loan has been or is closed on a date that is not later than the expiration date of the certificate of commitment, notwithstanding that the Secretary in the meantime and prior to the issuance of the evidence of guaranty or insurance shall have incurred actual liability or loss on a direct, guaranteed, or insured loan previously obtained by the borrower. For the purposes of this paragraph, the Secretary will be deemed to have incurred actual loss on a guaranteed or insured loan if the Secretary has paid a guaranty or insurance claim thereon and the veteran's resultant indebtedness to the Government has not been paid in full, and to have incurred actual liability on a guaranteed or insured loan if the Secretary is in receipt of a claim on the guaranty or insurance or is in receipt of a notice of default. In the case of a direct loan, the Secretary will be deemed to have incurred an actual loss if the loan is in default. A loan, the proceeds of which are to be disbursed progressively or at intervals, will be deemed to have been closed for the purposes of this paragraph if the loan has been completed in all respects excepting the actual ''payout'' of the entire loan proceeds.

(Authority: 38 U.S.C. 3702(a), 3710(c))

(i) Any amounts that are disbursed for an ineligible purpose shall be excluded in computing the amount of guaranty or insurance credit.

(j) Notwithstanding the lender has erroneously, but without intent to misrepresent, made certification with respect to paragraph (a)(1) of this section, the guaranty or insurance will become effective upon the curing of such default and its continuing current for a period of not less than 60 days thereafter. For the purpose of this paragraph a loan will be deemed current so long as the installment is received within 30 days after its due date.

(k) No guaranty or insurance commitment or evidence of guaranty or insurance will be issuable in respect to any loan to finance a contract that:

(1) Is for the purchase, construction, repair, alteration, or improvement of a dwelling or farm residence;

(2) Is dated on or after June 4, 1969;

(3) Provides for a purchase price or cost to the veteran in excess of the reasonable value established by the Secretary; and

(4) Was signed by the veteran prior to the veteran's receipt of notice of such reasonable value; unless such contract includes, or is amended to include, a provision that reads substantially as follows:

> It is expressly agreed that, notwithstanding any other provisions of this contract, the purchaser shall not incur any penalty by forfeiture of earnest money or otherwise be obligated to complete the purchase of the property described herein, if the contract purchase price or cost exceeds the reasonable value of the property established by the Department of Veterans Affairs. The purchaser shall, however, have the privilege and option of proceeding with the consummation of this contract without regard to the amount of the reasonable value established by the Department of Veterans Affairs.

(Authority: 38 U.S.C. 501, 3703(c)(1))

(l) With respect to any loan for which a commitment was made on or after March 1, 1988, the Secretary must be notified whenever the holder receives knowledge of disposition of the residential property securing a VA-guaranteed loan.

(1) If the seller applies for prior approval of the assumption of the loan, then:

(i) A holder (or its authorized servicing agent) who is an automatic lender must examine the creditworthiness of the purchaser and determine compliance with the provisions of 38 U.S.C. 3714. The creditworthiness review must be performed by the party that has automatic authority. If both the holder and its servicing agent are automatic lenders, then they must decide between themselves which one will make the determination of creditworthiness, whether the loan is current and whether there is a contractual obligation to assume the loan, as required by 38 U.S.C. 3714. If the actual loan holder

does not have automatic authority and its servicing agent is an automatic lender, then the servicing agent must make the determinations required by 38 U.S.C. 3714 on behalf of the holder. The actual holder will remain ultimately responsible for any failure of its servicing agent to comply with the applicable law and VA regulations.

(A) If the assumption is approved and the transfer of the security is completed, then the notice required by this paragraph (l) shall consist of the credit package (unless previously provided in accordance with paragraph (l)(1)(i)(B) of this section) and a copy of the executed deed and/or assumption agreement as required by VA office of jurisdiction. The notice shall be submitted to the Department with the VA receipt for the funding fee provided for in § 36.4813(e)(2).

(B) If the application for assumption is disapproved, the holder shall notify the seller and the purchaser that the decision may be appealed to the VA office of jurisdiction within 30 days. The holder shall make available to that VA office all items used by the holder in making the holder's decision in case the decision is appealed to VA. If the application remains disapproved after 60 days (to allow time for appeal to and review by VA), then the holder must refund $50 of any fee previously collected under the provisions of § 36.4813(d)(8). If the application is subsequently approved and the sale is completed, then the holder (or its authorized servicing agent) shall provide the notice described in paragraph (l)(1)(i)(A) of this section.

(C) In performing the requirements of paragraphs (l)(1)(i)(A) or (l)(1)(i)(B) of this section, the holder must complete its examination of the creditworthiness of the prospective purchaser and advise the seller no later than 45 days after the date of receipt by the holder of a complete application package for the approval of the assumption. The 45-day period may be extended by an interval not to exceed the time caused by delays in processing of the application that are documented as beyond the control of the holder, such as employers or depositories not responding to requests for verifications, which were timely forwarded, or follow-ups on those requests.

(ii) If neither the holder nor its authorized servicing agent is an automatic lender, the notice to VA shall include:

(A) Advice regarding whether the loan is current or in default;

(B) A copy of the purchase contract; and

(C) A complete credit package developed by the holder which the Secretary may use for determining the creditworthiness of the purchaser.

(D) The notice and documents required by this section must be submitted to the VA office of jurisdiction no later than 35 days after the date of receipt by the holder of a complete application package for the approval of the assumption, subject to the same extensions as provided in paragraph (l)(l)(i) of this section. If the assumption is not automatically approved by the holder or its authorized agent, pursuant to the automatic authority provisions, $50 of any fee collected in accordance with § 36.4813(d)(8) must be refunded. If the Department of Veterans Affairs does not approve the assumption, the holder will be notified and an additional $50 of any fee collected under § 36.4813(d)(8) must be refunded following the expiration of the 30-day appeal period set out in paragraph (l)(l)(i)(B) of this section. If such an appeal is made to the Department of Veterans Affairs, then the review will be conducted at the Department of Veterans Affairs office of jurisdiction by an individual who was not involved in the original disapproval decision. If the application for assumption is approved and the transfer of security is completed, then the holder (or its authorized servicing agent) shall provide the notice required in paragraph (l)(l)(i)(A) of this section.

(2) If the seller fails to notify the holder before disposing of property securing the loan, the holder shall notify the Secretary within 60 days after learning of the transfer. Such notice shall advise whether or not the holder intends to exercise its option to immediately accelerate the loan and whether or not an opportunity will be extended to the transferor and transferee to apply for retroactive approval of the assumption under the terms of this paragraph (l).

(Authority: 38 U.S.C. 3714)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0516.)

§ 36.4804 Deviations; changes of identity.

A deviation of more than 5 percent between the estimates upon which a certificate of commitment has been issued and the report of final payment of the proceeds of the loan, or a change in the identity of the property upon which the original appraisal was based, will invalidate the certificate of commitment unless such deviation or change be approved by the Secretary. Any deviation in excess of 5 percent or change in the identity of the property upon which the original appraisal was based must be supported by a new or supplemental appraisal of reasonable value: Provided, That substitution of materials of equal or better quality and value approved by the veteran and the designated appraiser shall not be deemed a ''change in the identity of the property'' within the purview of this section. A deviation not in excess of 5 percent will not require the prior approval of the Secretary.

(Authority: 38 U.S.C. 3703(c)(1))

§ 36.4805 Partial disbursement.

In cases where intervening circumstances make it impracticable to complete the actual paying out of the loan originally proposed, or justify the lender in declining to make further disbursements on a construction loan, evidence of guaranty or of insurance of the loan or the proper pro rata part thereof will be issuable if the loan is otherwise eligible for automatic guaranty or a certificate of commitment was issued thereon: Provided,

(a) A report of the loan is submitted to the Secretary within a reasonable time subsequent to the last disbursement, but in no event more than 90 days thereafter, unless report of the facts and circumstances is made and an extension of time obtained from the Secretary.

(b) There has been no default on the loan, except that the existence of a default shall not preclude issuance of a guaranty certificate or insurance advice if a certificate of commitment was issued with respect to the loan.

(c) The Secretary determines that a person of reasonable prudence similarly situated would not make further disbursements in the situation presented.

(d) There has been full compliance with the provisions of 38 U.S.C. chapter 37 and of the applicable regulations up to the time of the last disbursement.

(e) In the case of a construction loan when the construction is not fully completed, the amount and percentage of the guaranty and the amount of the loan for the purposes of insurance or accounting to the Secretary shall be based upon such portion of the amount disbursed out of the proceeds of the loan which, when added to any other payments made by or on behalf of the veteran to the builder or the contractor, does not exceed 80 percent of the value of that portion of the construction performed (basing value on the contract price) plus the sum, if any, disbursed by the lender out of the proceeds of the loan for the land on which the construction is situated: And provided

further, That the lender shall certify as follows:

(1) Any amount advanced for land is protected by title or lien as provided in the regulations concerning guaranty or insurance of loans to veterans; and

(2) No enforceable liens, for any work done or material furnished for that part of the construction completed and for which payment has been made out of the proceeds of the loan, exist or can come into existence.

(Authority: 38 U.S.C. 3703(c)(1) and (d))

§ 36.4806 Refinancing of mortgage or other lien indebtedness.

(a) Any loan for the purpose of refinancing (38 U.S.C. 3710(a)(5)) an existing mortgage loan or other indebtedness secured by a lien of record on a dwelling or farm residence owned and occupied or to be reoccupied if the refinancing loan is for the completion of major alterations, repairs or improvements to the property, by an eligible veteran as the veteran's home, or in the case of an eligible veteran unable to occupy the property because of active duty status in the Armed Forces, occupied or to be reoccupied by the veteran's spouse as the spouse's home, shall be eligible for guaranty in an amount as computed under § 36.4802(a) provided that—

(1) The amount of the loan may not exceed an amount equal to 90 percent of the reasonable value of the dwelling or farm residence which will secure the loan, as determined by the Secretary.

(Authority: 38 U.S.C. 3710(e)(1))

(2) The dollar amount of discount, if any, to be paid by the veteran is reasonable in amount as determined by the Secretary in accordance with § 36.4813(d)(7)(i),

(3) The loan is otherwise eligible for guaranty.

(b) [Reserved]

(c) Nothing shall preclude guaranty of a loan to an eligible veteran having home loan guaranty entitlement to refinance under the provisions of 38 U.S.C. 3710(a)(5) a VA guaranteed or insured (or direct) mortgage loan made to him or her which is outstanding on the dwelling or farm residence owned and occupied or to be reoccupied after the completion of major alterations, repairs, or improvements to the property, by the veteran as a home, or in the case of an eligible veteran unable to occupy the property because of active duty status in the Armed Forces, occupied or to be reoccupied by the veteran's spouse as the spouse's home.

(Authority: 38 U.S.C. 3710(e)(1))

(d) A refinancing loan may include contractual prepayment penalties, if any, due the holder of the mortgage or other lien indebtedness to be refinanced.

(e) [Reserved]

(f) Nothing in this section shall preclude the refinancing of the balance due for the purchase of land on which new construction is to be financed through the proceeds of the loan, or the refinancing of the balance due on an existing land sale contract relating to a veteran's dwelling or farm residence.

(g) A veteran may refinance (38 U.S.C. 3710(a)(9)(B)(ii)) an existing loan that was for the purchase of, and is secured by, a manufactured home in order to purchase the lot on which the manufactured home is or will be permanently affixed, provided the following requirements are met:

(1) The refinancing of a manufactured home and the purchase of a lot must be considered as one loan;

(2) The manufactured home upon being permanently affixed to the lot will be considered real property under the laws of the State where it is located;

(3) The loan must be secured by the same manufactured home which is being refinanced and the real property on which the manufactured home is or will be located;

(4) The amount of the loan may not exceed an amount equal to the sum of the balance of the loan being refinanced; the purchase price, not to exceed the reasonable value of the lot; the costs of the necessary site preparation of the lot as determined by the Secretary; a reasonable discount as authorized in § 36.4813(d)(6) with respect to that portion of the loan used to refinance the existing purchase money lien on the manufactured home, and closing costs as authorized in § 36.4813; and

(5) If the loan being refinanced was guaranteed by VA, the portion of the loan made for the purpose of refinancing an existing purchase money manufactured home loan may be, guaranteed without regard to the outstanding guaranty entitlement available for use by the veteran, and the veteran's guaranty entitlement shall not be charged as a result of any guaranty provided for the refinancing portion of the loan. For the purposes enumerated in 38 U.S.C. 3702(b), the refinancing portion of the loan shall be considered to have been obtained with the guaranty entitlement used to obtain VA-guaranteed loan being refinanced. The total guaranty for the new loan shall be the sum of the guaranty entitlement used to obtain VA-guaranteed loan being refinanced and any additional guaranty entitlement available to the veteran. However, the total guaranty may not exceed the guaranty amount as calculated under § 36.4802(a).

(Authority: 38 U.S.C. 3703(a), 3710)

§ 36.4807 Interest rate reduction refinancing loan.

(a) Pursuant to 38 U.S.C. 3710(a)(8), (a)(9)(B)(i), and (a)(11), a veteran may refinance an existing VA guaranteed, insured, or direct loan to reduce the interest rate payable on the existing loan provided that all of the following requirements are met:

(1) The new loan must be secured by the same dwelling or farm residence as the loan being refinanced.

(2) The veteran owns the dwelling or farm residence securing the loan and

(i) Occupies the dwelling or residence as his or her home; or

(ii) Previously occupied the dwelling or residence as his or her home and certifies, in such form as the Secretary shall require, that he or she has previously occupied the dwelling or residence as a home; or

(iii) In a case in which the veteran is or was unable to occupy the residence or dwelling as a home because the veteran was on active duty status as a member of the Armed Forces, the spouse of the veteran occupies, or previously occupied, the dwelling or residence as the spouse's home and certifies to that occupancy in such form as the Secretary shall require.

(Authority: 38 U.S.C. 3710(e)(1))

(3) The monthly principal and interest payment on the new loan is lower than the principal and interest payment on the loan being refinanced; or the term of the new loan is shorter than the term of the loan being refinanced; or the new loan is a fixed-rate loan that refinances a VA-guaranteed adjustable rate mortgage; or the increase in the monthly payments on the loan results from the inclusion of energy efficient improvements, as provided by § 36.4839(a)(4); or the Secretary approves the loan in advance after determining that the new loan is necessary to prevent imminent foreclosure and the veteran qualifies for the new loan under the credit standards contained in § 36.4840.

(4) The amount of the refinancing loan does not exceed:

(i) An amount equal to the balance of the loan being refinanced, which is not delinquent, except as provided in paragraph (a)(5) of this section, plus closing costs authorized by § 36.4813(d) and a discount not to exceed 2 percent of the loan amount; or

(ii) In the case of a loan to refinance an existing VA-guaranteed or direct loan and to improve the dwelling securing

such loan through energy efficient improvements, the amount referred to with respect to the loan under paragraph (a)(4)(i) of this section, plus the amount authorized by § 36.4839(a)(4).

(Authority: 38 U.S.C. 3703, 3710)

(5) If the loan being refinanced is delinquent (delinquent means that a scheduled monthly payment of principal and interest is more than 30 days past due), the new loan will be guaranteed only if the Secretary approves it in advance after determining that the borrower, through the lender, has provided reasons for the loan deficiency, has provided information to establish that the cause of the delinquency has been corrected, and qualifies for the loan under the credit standards contained in § 36.4840. In such cases, the term ''balance of the loan being refinanced'' shall include any past due installments, plus allowable late charges.

(6) The dollar amount of guaranty on the 38 U.S.C. 3710(a)(8) or (a)(9)(B)(i) loan does not exceed the greater of the original guaranty amount of the loan being refinanced or 25 percent of the new loan.

(7) The term of the refinancing loan (38 U.S.C. 3710(a)(8)) may not exceed the original term of the loan being refinanced plus ten years, or the maximum loan term allowed under 38 U.S.C. 3703(d)(1), whichever is less. For manufactured home loans that were previously guaranteed under 38 U.S.C. 3712, the loan term, if being refinanced under 38 U.S.C. 3710(a)(9)(B)(i), may exceed the original term of the loan but may not exceed the maximum loan term allowed under 38 U.S.C. 3703(d)(1).

(Authority: 38 U.S.C. 3703(c)(1), 3710(e)(1))

(b) Notwithstanding any other regulatory provision, the interest rate reduction refinancing loan may be guaranteed without regard to the amount of guaranty entitlement available for use by the veteran, and the amount of the veteran's remaining guaranty entitlement, if any, shall not be charged for an interest rate reduction refinancing loan. The interest rate reduction refinancing loan will be guaranteed with the lesser of the entitlement used by the veteran to obtain the loan being refinanced or the amount of the guaranty as calculated under § 36.4802(a). The veteran's loan guaranty entitlement originally used for a purpose as enumerated in 38 U.S.C. 3710(a)(1) through (7) and (a)(9)(A)(i) and (ii) and subsequently transferred to an interest rate reduction refinancing loan (38 U.S.C. 3710(a)(8) or (a)(9)(B)(i)) shall be eligible for restoration when the interest rate reduction refinancing loan or subsequent interest rate reduction refinancing loans on the same property meets the requirements of § 36.4802(h).

(Authority: 38 U.S.C. 3703(a))

(c) Title to the estate which is refinanced for the purpose of an interest rate reduction must be in conformity with § 36.4854.

(Authority: 38 U.S.C. 3710(a)(8), (a)(9)(B)(i) and (e))

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0601.)

§ 36.4808 Joint loans.

(a) Except as provided in paragraph (b) of this section, the prior approval of the Secretary is required in respect to any loan to be made to two or more borrowers who become jointly and severally liable, or jointly liable therefor, and who will acquire an undivided interest in the property to be purchased or who will otherwise share in the proceeds of the loan, or in respect to any loan to be made to an eligible veteran whose interest in the property owned, or to be acquired with the loan proceeds, is an undivided interest only, unless such interest is at least a 50 percent interest in a partnership. The amount of the guaranty or insurance credit shall be computed in such cases only on that portion of the loan allocable to the eligible veteran which, taking into consideration all relevant factors, represents the proper contribution of the veteran to the transaction. Such loans shall be secured to the extent required by 38 U.S.C. chapter 37 and the regulations concerning guaranty or insurance of loans to veterans.

(b) Notwithstanding the provisions of paragraph (a) of this section, the joinder of the spouse of a veteran-borrower in the ownership of residential property shall not require prior approval or preclude the issuance of a guaranty or insurance credit based upon the entire amount of the loan. If both spouses be eligible veterans, either or both may, within permissible maxima, utilize available guaranty or insurance entitlement.

(c) For the purpose of determining the rights and the liabilities of the Secretary with respect to a loan subject to paragraph (a) of this section, credits legally applicable to the entire loan shall be applied as follows:

(1) Prepayments made expressly for credit to that portion of the indebtedness allocable to the veteran (including the gratuity paid pursuant to former provisions of law), shall be applied to such portion of the indebtedness. All other payments shall be applied ratably to those portions of the loan allocable respectively to the veteran and to the other debtors.

(2) Proceeds of the sale or other liquidation of the security shall be applied ratably to the respective portions of the loan, such portion of the proceeds as represents the interest of the veteran being applied to that portion of the loan allocable to such veteran.

(Authority: 38 U.S.C. 3703)

§ 36.4809 Transfer of title by borrower or maturity by demand or acceleration.

(a) Except as provided by paragraphs (b) or (c) of this section the conveyance of or other transfer of title to property by operation of law or otherwise, after the creation of a lien thereon to secure a loan which is guaranteed or insured in whole or in part by the Secretary, shall not constitute an event of default, or acceleration of maturity, elective or otherwise, and shall not of itself terminate or otherwise affect the guaranty or insurance.

(b)(1) The Secretary may issue guaranty on loans in which a State, Territorial, or local governmental agency provides assistance to a veteran for the acquisition of a dwelling. Such loans will not be considered ineligible for guaranty if the State, Territorial, or local authority, by virtue of its laws or regulations or by virtue of Federal law, requires the acceleration of maturity of the loan upon the sale or conveyance of the security property to a person ineligible for assistance from such authority.

(2) At the time of application for a loan assisted by a State, Territorial, or local governmental agency, the veteran-applicant must be fully informed and consent in writing to the housing authority restrictions. A copy of the veteran's consent statement must be forwarded with the loan application or the report of a loan processed on the automatic basis.

(Authority: 38 U.S.C. 3703(c))

(c) Any housing loan which is financed under 38 U.S.C. chapter 37, and to which section 3714 of that chapter applies, shall include a provision in the security instrument that the holder may declare the loan immediately due and payable upon transfer of the property securing such loan to any transferee unless the acceptability of the assumption of the loan is established pursuant to section 3714.

(1) A holder may not exercise its option to accelerate a loan upon:

(i) The creation of a lien or other encumbrance subordinate to the lender's security instrument which does not relate to the transfer of rights of occupancy in the property;

(ii) The creation of a purchase money security interest for household appliances;

(iii) A transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety;

(iv) The granting of a leasehold interest of three years or less not containing an option to purchase;

(v) A transfer to a relative resulting from the death of a borrower;

(vi) A transfer where the spouse or children of the borrower become joint owners of the property with the borrower;

(vii) A transfer resulting from a decree of a dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement by which the spouse of the borrower becomes the sole owner of the property. In such a case the borrower shall have the option of applying directly to the Department of Veterans Affairs regional office of jurisdiction for a release of liability in accordance with § 36.4826; or

(viii) A transfer into an inter vivos trust in which the borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property.

(2) With respect to each such loan at least one of the instruments used in the transaction shall contain the following statement: ''This loan is not assumable without the approval of the Department of Veterans Affairs or its authorized agent.'' This statement must be:

(i) Printed in a font size which is the larger of:

(A) Two times the largest font size contained in the body of the instrument; or

(B) 18 points; and

(ii) Contained in at least one of the following:

(A) The note;

(B) The mortgage or deed of trust; or

(C) A rider to either the note, the mortgage, or the deed of trust.

(Authority: (38 U.S.C. 3714(d))

(d) The term of payment of any guaranteed or insured obligation shall bear a proper relation to the borrower's present and anticipated income and expenses, (except loans pursuant to 38 U.S.C. 3710(a)(8) or (a)(9)(B)(i)). In addition the terms of payment of any guaranteed or insured obligation shall provide for discharge of the obligation at a definite date or dates or intervals, in amount specified on or computable from the face of the instrument. A loan which is payable on demand, or at sight, or on presentation, or at a time not specified or computable from the language in the note, mortgage, or other loan instrument, or which contemplates periodic renewals at the option of the holder to satisfy the repayment requirements of this section, is not eligible for guaranty or insurance, except as provided in paragraph (f) of this section.

(e) No guaranteed or insured obligation shall contain a provision to the effect that the holder shall have the right to declare the indebtedness due, or to pursue one or more legal or equitable remedies, if holder ''shall feel insecure,'' or upon the occurrence of one or more such conditions optional to the holder, without regard to an act or omission by the debtor, which condition by the terms of the note, mortgage, or other loan instrument would at the option of the holder afford a basis for declaring a default.

(f) Notwithstanding the inclusion in the guaranteed or insured obligation of a provision contrary to the provisions of this section, the right of the holder to payment of the guaranty or insurance shall not be thereby impaired: Provided,

(1) Default was declared or maturity was accelerated under some other provision of the note, mortgage, or other loan instrument, or

(2) Activation or enforcement of such provision is warranted under § 36.4850(i)(2), or if there exist conditions justifying the appointment of a receiver for the property (without reference to any contractual provisions for such appointment), or

(3) The prior approval of the Secretary was obtained.

(Authority: 38 U.S.C. 3703(c))

(g) The holder of any guaranteed or insured obligation shall have the right, notwithstanding the absence of express provision therefor in the instruments evidencing the indebtedness, to accelerate the maturity of such obligation at any time after the continuance of any default for the period of three months.

(h) If sufficient funds are tendered to bring a delinquency current at any time prior to a judicial or statutory sale or other public sale under power of sale provisions contained in the loan instruments to liquidate any security for a guaranteed loan, the holder shall be obligated to accept the funds in payment of the delinquency unless the prior approval of the Secretary is obtained to do otherwise, or unless reinstatement of the loan would adversely affect the dignity of the lien or be otherwise precluded by law. A delinquency will include all installment payments (principal, interest, taxes, insurance, advances, etc.) due and unpaid and any accumulated late charges plus any reasonable expenses incurred and paid by the holder if termination proceedings have begun (e.g., advertising costs, foreclosure costs, attorney or trustee fees, recording fees, etc.).

(Authority: 38 U.S.C. 3703(c))

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0516.)

§ 36.4810 Amortization.

(a) All loans, the maturity date of which is beyond 5 years from date of loan or date of assumption by the veteran, shall be amortized. Except as provided in paragraph (e) of this section, the schedule of payments thereon shall be in accordance with any generally recognized plan of amortization requiring approximately equal periodic payments and shall require a principal reduction not less often than annually during the life of the loan. The final installment on any loan shall not be in excess of two times the average of the preceding installments, except that on a construction loan such installment may be for an amount not in excess of 5 percent of the original principal amount of the loan. The limitations imposed herein on the amount of the final installment shall not apply in the case of any loan extended pursuant to § 36.4815.

(b) Any plan of repayment on loans required to be amortized which does not provide for approximately equal periodic payments shall not be eligible unless the plan conforms with the provisions of paragraph (e) of this section, or is otherwise approved by the Secretary.

(c) Every guaranteed or insured loan shall be repayable within the estimated economic life of the property securing the loan.

(d) Subject to paragraph (a) of this section, any amounts which under the terms of a loan do not become due and payable on or before the last maturity date permissible for loans of its class under the limitations contained in 38 U.S.C. chapter 37 shall automatically fall due on such date. *See* § 36.4837.

(e) A graduated payment mortgage loan, providing for deferrals of interest during the first 5 years of the loan and addition of the deferred amounts to principal shall be eligible, Provided:

(1) The loan is for the purpose of acquiring a single-family dwelling unit,

including a condominium unit or simultaneously acquiring and improving a previously occupied, existing single-family dwelling unit.

(2)(i) For proposed construction or existing homes not previously occupied (new homes), the maximum loan amount cannot exceed 97.5 percent of the lesser of the reasonable value of the property as of the time the loan is made or the purchase price.

(ii) For previously occupied, existing homes the maximum loan amount must be computed to assure that the principal amount of the loan, including all interest scheduled to be deferred and added to the loan principal, will not exceed the purchase price or reasonable value of the property, whichever is less, as of the time the loan is made;

(3) The increases in the monthly periodic payment amount occur annually on each of the first five annual anniversary dates of the first loan installment due date, at a rate of 7.5 percent over the preceding year's monthly payment amount;

(4) Beginning with the payment due on the fifth annual anniversary date of the first loan installment due date, all remaining monthly periodic payments are approximately equal in amount and amortize the loan fully in accordance with the requirements of this section, and

(5) The plan is otherwise acceptable to the Secretary.

(Authority: 38 U.S.C. 3703(d))

§ 36.4811 Prepayment.

The debtor shall have the right to prepay at any time, without premium or fee, the entire indebtedness or any part thereof not less than the amount of one installment, or $100, whichever is less. Any prepayment in full of the indebtedness shall be credited on the date received, and no interest may be charged thereafter. Any partial prepayment made on other than an installment due date need not be credited until the next following installment due date or 30 days after such prepayment, whichever is earlier. The holder and the debtor may agree at any time that any prepayment not previously applied in satisfaction of matured installments shall be reapplied for the purpose of curing or preventing any subsequent default.

(Authority: 38 U.S.C. 3703(d))

§ 36.4812 Interest rates.

(a) In guaranteeing or insuring loans under 38 U.S.C. chapter 37, the Secretary may elect to require that such loans either bear interest at a rate that is agreed upon by the veteran and the lender, or bear interest at a rate not in excess of a rate established by the Secretary. The Secretary may, from time to time, change that election by publishing a notice in the **Federal Register**. However, the interest rate of a loan for the purpose of an interest rate reduction under 38 U.S.C. 3710(a)(8), (a)(9)(B)(i), or (a)(11) must be less than the interest rate of the VA loan being refinanced. This paragraph does not apply in the case of an adjustable rate mortgage being refinanced under 38 U.S.C. 3710(a)(8), (a)(9)(B)(i), or (a)(11) with a fixed rate loan.

(Authority: 38 U.S.C. 3703, 3710)

(b) For loans bearing an interest rate agreed upon by the veteran and the lender, the veteran may pay reasonable discount points in connection with the loan. The discount points may not be included in the loan amount, except for interest rate reduction refinancing loans under 38 U.S.C. 3710(a)(8), (a)(9)(B)(i), and (a)(11). For loans bearing an interest rate agreed upon by the veteran and the lender, the provisions of § 36.4813(d)(6) and (d)(7) do not apply.

(Authority: 38 U.S.C. 3703, 3710)

(c) Except as provided in § 36.4815, interest in excess of the rate reported by the lender when requesting evidence of guaranty or insurance shall not be payable on any advance, or in the event of any delinquency or default: Provided, that a late charge not in excess of an amount equal to 4 percent on any installment paid more than 15 days after due date shall not be considered a violation of this limitation.

(Authority: 38 U.S.C. 3710)

(d) Effective October 1, 2003, adjustable rate mortgage loans which comply with the requirements of this paragraph (d) are eligible for guaranty.

(1) *Interest rate index*. Changes in the interest rate charged on an adjustable rate mortgage must correspond to changes in the weekly average yield on one year (52 weeks) Treasury bills adjusted to a constant maturity. Yields on one year Treasury bills at ''constant maturity'' are interpolated by the United States Treasury from the daily yield curve. This curve, which relates the yield on the security to its time to maturity, is based on the closing market bid yields on actively traded one year Treasury bills in the over-the-counter market. The weekly average one year constant maturity Treasury bill yields are published by the Federal Reserve Board of the Federal Reserve System. The Federal Reserve Statistical Release Report H. 15 (519) is released each Monday. These one year constant maturity Treasury bill yields are also published monthly in the Federal Reserve Bulletin, published by the Federal Reserve Board of the Federal Reserve System, as well as quarterly in the Treasury Bulletin, published by the Department of the Treasury.

(2) *Frequency of interest rate changes*. Interest rate adjustments must occur on an annual basis, except that the first adjustment may occur no sooner than 36 months from the date of the borrower's first mortgage payment. The adjusted rate will become effective the first day of the month following the adjustment date; the first monthly payment at the new rate will be due on the first day of the following month. To set the new interest rate, the lender will determine the change between the initial (i.e., base) index figure and the current index figure. The initial index figure shall be the most recent figure available before the date of mortgage loan origination. The current index figure shall be the most recent index figure available 30 days before the date of each interest rate adjustment.

(3) *Method of rate changes*. Interest rate changes may only be implemented through adjustments to the borrower's monthly payments.

(4) *Initial rate and magnitude of changes*. The initial contract interest rate of an adjustable rate mortgage shall be agreed upon by the lender and the veteran. Annual adjustments in the interest rate shall correspond to annual changes in the interest rate index, subject to the following conditions and limitations:

(i) No single adjustment to the interest rate may result in a change in either direction of more than one percentage point from the interest rate in effect for the period immediately preceding that adjustment. Index changes in excess of one percentage point may not be carried over for inclusion in an adjustment in a subsequent year. Adjustments in the effective rate of interest over the entire term of the mortgage may not result in a change in either direction of more than five percentage points from the initial contract interest rate.

(ii) At each adjustment date, changes in the index interest rate, whether increases or decreases, must be translated into the adjusted mortgage interest rate, rounded to the nearest one-eighth of one percent, up or down. For example, if the margin is 2 percent and the new index figure is 6.06 percent, the adjusted mortgage interest rate will be 8 percent. If the margin is 2 percent and the new index figure is 6.07 percent, the adjusted mortgage interest rate will be 8 1/8 percent.

(5) *Pre-loan disclosure*. The lender shall explain fully and in writing to the

borrower, at the time of loan application, the nature of the obligation taken. The borrower shall certify in writing that he or she fully understands the obligation and a copy of the signed certification shall be placed in the loan folder and furnished to VA upon request.

(i) The fact that the mortgage interest rate may change, and an explanation of how changes correspond to changes in the interest rate index;

(ii) Identification of the interest rate index, its source of publication and availability;

(iii) The frequency (i.e., annually) with which interest rate levels and monthly payments will be adjusted, and the length of the interval that will precede the initial adjustment; and

(iv) A hypothetical monthly payment schedule that displays the maximum potential increases in monthly payments to the borrower over the first five years of the mortgage, subject to the provisions of the mortgage instrument.

(6) *Annual disclosure.* At least 25 days before any adjustment to a borrower's monthly payment may occur, the lender must provide a notice to the borrower which sets forth the date of the notice, the effective date of the change, the old interest rate, the new interest rate, the new monthly payment amount, the current index and the date it was published, and a description of how the payment adjustment was calculated. A copy of the annual disclosure shall be made a part of the lender's permanent record on the loan.

(Authority: 38 U.S.C. 3707A)

§ 36.4813 Charges and fees.

(a) No charge shall be made against, or paid by, the borrower incident to the making of a guaranteed or insured loan other than those expressly permitted under paragraph (d) or (e) of this section, and no loan shall be guaranteed or insured unless the lender certifies to the Secretary that it has not imposed and will not impose any charges or fees against the borrower in excess of those permissible under paragraph (d) or (e) of this section. Any charge which is proper to make against the borrower under the provisions of this paragraph may be paid out of the proceeds of the loan: Provided, That if the purpose of the loan is to finance the purchase or construction of residential property the costs of closing the loan including the pro rata portion of the ground rents, hazard insurance premiums, current year's taxes, and other prepaid items normally involved in financing such transaction may not be included in the loan.

(b) Except as provided in this subpart, no brokerage or service charge or their equivalent may be charged against the debtor or the proceeds of the loan either initially, periodically, or otherwise.

(c) Brokerage or other charges shall not be made against the veteran for obtaining any guaranty or insurance under 38 U.S.C. chapter 37, nor shall any premiums for insurance on the life of the borrower be paid out of the proceeds of a loan.

(d) The following schedule of permissible fees and charges shall be applicable to all Department of Veterans Affairs guaranteed or insured loans.

(1) The veteran may pay reasonable and customary amounts for any of the following items:

(i) Fees of Department of Veterans Affairs appraiser and of compliance inspectors designated by the Department of Veterans Affairs except appraisal fees incurred for the predetermination of reasonable value requested by others than veteran or lender.

(ii) Recording fees and recording taxes or other charges incident to recordation.

(iii) Credit report.

(iv) That portion of taxes, assessments, and other similar items for the current year chargeable to the borrower and an initial deposit (lump-sum payment) for the tax and insurance account.

(v) Hazard insurance required by § 36.4829.

(vi) Survey, if required by lender or veteran; except that any charge for a survey in connection with a loan under §§ 36.4860 through 36.4865 (Condominium Loans) must have the prior approval of the Secretary.

(vii) Title examination and title insurance, if any.

(viii) The actual amount charged for flood zone determinations, including a charge for a life-of-the-loan flood zone determination service purchased at the time of loan origination, if made by a third party who guarantees the accuracy of the determination. A fee may not be charged for a flood zone determination made by a Department of Veterans Affairs appraiser or for the lender's own determination.

(ix) Such other items as may be authorized in advance by the Under Secretary for Benefits as appropriate for inclusion under this paragraph (d) as proper local variances.

(2) A lender may charge and the veteran may pay a flat charge not exceeding 1 percent of the amount of the loan, provided that such flat charge shall be in lieu of all other charges relating to costs of origination not expressly specified and allowed in this schedule.

(3) In cases where a lender makes advances to a veteran during the progress of construction, alteration, improvement, or repair, either under a commitment of the Department of Veterans Affairs to issue a guaranty certificate or insurance credit upon completion, or where the lender would be entitled to guaranty or insurance on such advances when reported under automatic procedure, the lender may make a charge against the veteran of not exceeding 2 percent of the amount of the loan for its services in supervising the making of advances and the progress of construction notwithstanding that the ''holdback'' or final advance is not actually paid out until after the construction, alteration, improvement, or repair is fully completed: Provided, That the major portion (51 percent or more) of the loan proceeds is paid out during the actual progress of the construction, alteration, improvement, or repair. Such charge may be in addition to the 1 percent charge allowed under paragraph (d)(2) of this section.

(4) In consideration, alteration, improvement or repair loans, including supplemental loans made pursuant to § 36.4859, where no charge is permissible under the provisions of paragraph (d)(3) of this section the lender may charge and the veteran may pay a flat sum not exceeding 1 percent of the amount of the loan. Such charge may be in addition to the 1 percent allowed under paragraph (d)(2) of this section.

(5) The fees and charges permitted under this paragraph are maximums and are not intended to preclude a lender from making alternative charges against the veteran which are not specifically authorized in the schedule provided the imposition of such alternative charges would not result in an aggregate charge or payment in excess of the prescribed maximum.

(6) The veteran borrower subject to the limitations set forth in paragraphs (d)(6) and (7) of this section may pay a discount required by a lender when the proceeds of the loan will be used for any of the following purposes:

(i) To refinance existing indebtedness pursuant to 38 U.S.C. 3710(a)(5), (a)(8), (a)(9)(B)(i) or (a)(9)(B)(ii);

(ii) To repair, alter or improve a dwelling owned by the veteran pursuant to 38 U.S.C. 3710(a)(4) or (7) if such loan is to be secured by a first lien;

(iii) To construct a dwelling or farm residence on land already owned or to be acquired by the veteran, provided that the veteran did not or will not acquire the land directly or indirectly

from a builder or developer who will be constructing such dwelling or farm residence;

(iv) To purchase a dwelling from a class of sellers which the Secretary determines are legally precluded under all circumstances from paying such a discount if the best interest of the veteran would be so served.

(7) Discounts shall be computed as follows:

(i) Unless otherwise approved by the Secretary, the discount, if any, to be paid by the borrower on a loan secured by a first lien may not exceed the difference between the bid price, rounded to the lower whole number, and par value for GNMA (Government National Mortgage Association) 90-day forward bid closing price for pass through securities ½ percent less than the face note rate of the loan. Unless the lender and borrower negotiate a firm written commitment for a maximum amount of discount to be paid, the bid price to be used in the computation must be the GNMA 90-day forward bid closing quote for any day 1 to 4 business days prior to loan closing. ''Loan closing'' is defined for this purpose as the date on which the borrower's 3-day right of rescission commences pursuant to the Truth in Lending Act. If the lender and borrower choose to negotiate a firm discount commitment for a maximum amount of discount to be paid, the bid price to be used in establishing the maximum discount must be the closing quote for the business day prior to the date of the commitment. Lenders negotiating firm commitments must close that loan at a discount no higher than the firm commitment regardless of changes in the maximum allowable Department of Veterans Affairs interest rate. If a lender's commitment expires prior to loan closing, the lender and borrower may negotiate a new firm commitment based on the procedure outlined in this paragraph (d)(7)(i) or may use the procedure for determining the discount based on the GNMA 90-day forward bid closing quote for any day 1 to 4 business days prior to loan closing.

(ii) The borrower, subject to the limitations set forth in paragraphs (d)(6) and (7) of this section, may pay a discount required by the lender when the proceeds of the loan will be used to repair, alter, or improve a dwelling owned by the veteran pursuant to 38 U.S.C. 3710(a)(4) or (7) if such loan is unsecured or secured by less than a first lien. No such discount may be charged unless:

(A) The loan is submitted to the Secretary for prior approval;

(B) The dollar amount of the discount is disclosed to the Secretary and the veteran prior to the issuance by the Secretary of the certificate of commitment. Said certificate of commitment shall specify the discount to be paid by the veteran, and this discount may not be increased once the commitment is issued without the approval of the Secretary; and

(C) The discount has been determined by the Secretary to be reasonable in amount.

(iii) A veteran may pay the discount on an acquisition and improvement loan (as defined in § 36.4801) provided:

(A) The veteran pays no discount on the acquisition portion of the loan except in accordance with paragraph (d)(6)(iv) of this section; and

(B) The discount paid on the improvements portion of the loan does not exceed the percentage of discount paid on the acquisition portion of the loan.

Note to paragraph (d)(7)(iii): Acquisition and improvement loans may be closed either on the automatic or prior approval basis.

(iv) Unless the Under Secretary for Benefits otherwise directs, all powers of the Secretary under paragraphs (d)(6) and (7) of this section are hereby delegated to the officials designated by § 36.4845(b).

(Authority: 38 U.S.C. 3703, 3710; 42 U.S.C. 4001 note, 4012a)

(8) On any loan to which 38 U.S.C. 3714 applies, the holder may charge a reasonable fee, not to exceed the lesser of $300 and the actual cost of any credit report required, or any maximum prescribed by applicable State law, for processing an application for assumption and changing its records.

(Authority: 38 U.S.C. 3714)

(e) Subject to the limitations set out in paragraph (e)(4) of this section, a fee must be paid to the Secretary.

(1) The fee on loans to veterans shall be as follows:

(i) On all interest rate reduction refinancing loans guaranteed under 38 U.S.C. 3710(a)(8), (a)(9)(B)(i), and (a)(11), the fee shall be 0.50 percent of the total loan amount.

(ii) On all refinancing loans other than those described in paragraph (e)(1)(i) of this section, the funding fee shall be 2.75 percent of the loan amount for loans to veterans whose entitlement is based on service in the Selected Reserve under the provisions of 38 U.S.C. 3701(b)(5), and 2 percent of the loan amount for loans to all other veterans; provided, however, that if the veteran is using entitlement for a second or subsequent time, the fee shall be 3 percent of the loan amount.

(iii) Except for loans to veterans whose entitlement is based on service in the Selected Reserve under the provisions of 38 U.S.C. 3701(b)(5), the funding fee shall be 2 percent of the total loan amount for all loans for the purchase or construction of a home on which the veteran does not make a down payment, unless the veteran is using entitlement for a second or subsequent time, in which case the fee shall be 3 percent. On purchase or construction loans on which the veteran makes a down payment of 5 percent or more, but less than 10 percent, the amount of the funding fee shall be 1.50 percent of the total loan amount. On purchase or construction loans on which the veteran makes a down payment of 10 percent or more, the amount of the funding fee shall be 1.25 percent of the total loan amount.

(iv) On loans to veterans whose entitlement is based on service in the Selected Reserve under the provisions of 38 U.S.C. 3701(b)(5), the funding fee shall be 2.75 percent of the total loan amount on loans for the purchase or construction of a home on which the veteran does not make a down payment, unless the veteran is using entitlement for a second or subsequent time, in which case the fee shall be 3 percent. On purchase or construction loans on which veterans whose entitlement is based on service in the Selected Reserve make a down payment of 5 percent or more, but less than 10 percent, the amount of the funding fee shall be 2.25 percent of the total loan amount. On purchase or construction loans on which such veterans make a down payment of 10 percent or more, the amount of the funding fee shall be 2 percent of the total loan amount.

(v) All or part of the fee may be paid in cash at loan closing or all or part of the fee may be included in the loan without regard to the reasonable value of the property or the computed maximum loan amount, as appropriate. In computing the fee, the lender will disregard any amount included in the loan to enable the borrower to pay such fee.

(Authority: 38 U.S.C. 3729)

(2) Subject to the limitations set out in this section, a fee of one-half of one percent of the loan balance must be paid to the Secretary in a manner prescribed by the Secretary by a person assuming a loan to which 38 U.S.C. 3714 applies. The instrument securing such a loan shall contain a provision describing the right of the holder to collect this fee as trustee for the Department of Veterans

Affairs. The loan holder shall list the amount of this fee in every assumption statement provided and include a notice that the fee must be paid to the holder immediately following loan settlement. The fee must be transmitted to the Secretary within 15 days of the receipt by the holder of the notice of transfer.

(Authority: 38 U.S.C. 3714, 3729)

(3) The lender is required to pay to the Secretary the fee described in paragraph (e)(1) of this section within 15 days after loan closing. Any lender closing a loan, subject to the limitations set out in paragraph (e)(4) of this section who fails to submit timely payment of this fee will be subject to a late charge equal to 4 percent of the total fee due. If payment of the fee described in paragraph (e)(1) of this section is made more than 30 days after loan closing, interest will be assessed at a rate set in conformity with the Department of Treasury's Fiscal Requirements Manual. This interest charge is in addition to the 4 percent late charge, but the late charge is not included in the amount on which interest is computed. This interest charge is to be calculated on a daily basis beginning on the date of closing, although the interest will be assessed only on funding fee payments received more than 30 days after closing.

(4) The lender is required to pay to the Secretary electronically through the Automated Clearing House (ACH) system the fees described in paragraphs (e)(1) and (e)(2) of this section and any late fees and interest due on them. This shall be paid to a collection agent by operator-assisted telephone, terminal entry, or CPU-to-CPU transmission. The collection agent will be identified by the Secretary. The lender shall provide the collection agent with the following: authorization for payment of the funding fee (including late fees and interest) along with the following information: VA lender ID number; four-digit personal identification number; dollar amount of debit; VA loan number; OJ (office of jurisdiction) code; closing date; loan amount; information about whether the payment includes a shortage, late charge, or interest; veteran name; loan type; sale amount; down payment; whether the veteran is a reservist; and whether this is a subsequent use of entitlement. For all transactions received prior to 8:15 p.m. on a workday, VA will be credited with the amount paid to the collection agent at the opening of business the next banking day.

(Authority: 38 U.S.C. 3729(a))

(5) The fees described in paragraph (e)(1) and (e)(2) of this section shall not be collected from a veteran who is receiving compensation (or who but for the receipt of retirement pay would be entitled to receive compensation) or from a surviving spouse described in section 3701(b) of title 38, United States Code.

(Authority: 38 U.S.C. 3729)

(The Office of Management and Budget has approved the information collection requirements in this section under control numbers 2900–0474 and 2900–0516.)

§ 36.4814 Advances and other charges.

(a) A holder may advance any amount reasonably necessary and proper for the maintenance or repair of the security, or for the payment of accrued taxes, special assessments, ground or water rents, or premiums on fire or other casualty insurance against loss of or damage to such property and any such advance so made may be added to the guaranteed or insured indebtedness. A holder may also advance the one-half of one percent funding fee due on a transfer under 38 U.S.C. 3714 when this is not paid at the time of transfer. All security instruments for loans to which 38 U.S.C. 3714 applies must include a clause authorizing the collection of an assumption funding fee and an advance for this fee if it is not paid at the time of transfer.

(Authority: 38 U.S.C. 3703, 3714, 3732)

(b) In addition to advances allowable under paragraph (a) of this section, the holder may charge against the proceeds of the sale of the security; may charge against gross amounts collected; may include in any accounting to the Secretary after payment of a claim under the guaranty; may include in the computation of a claim under the guaranty, if lawfully authorized by the loan agreement and subject to § 36.4824(a); or, may include in the computation of an insurance loss, any of the following items actually paid:

(1) Any expense which is reasonably necessary for preservation of the security;

(2) Court costs in a foreclosure or other proper judicial proceeding involving the security;

(3) Other expenses reasonably necessary for collecting the debt, or repossession or liquidation of the security;

(4) Reasonable trustee's fees or commissions not in excess of those allowed by statute and in no event in excess of 5 percent of the unpaid indebtedness;

(5)(i) Fees for legal services actually performed, not to exceed the reasonable and customary fees for such services in the State where the property is located, as determined by the Secretary.

(ii) In determining what constitutes the reasonable and customary fees for legal services, the Secretary shall review allowances for legal fees in connection with the foreclosure of single-family housing loans, including bankruptcy-related services, issued by HUD, Fannie Mae, and Freddie Mac. The Secretary will review such fees annually and, as the Secretary deems necessary, publish in the **Federal Register** a table setting forth the amounts the Secretary determines to be reasonable and customary. The table will reflect the primary method for foreclosing in each state, either judicial or non-judicial, with the exception of those States where either judicial or non-judicial is acceptable. The use of a method not authorized in the table will require prior approval from VA. This table will be available throughout the year on a VA controlled Web site, such as at *http://www.homeloans.va.gov*.

(iii) If the foreclosure attorney has the discretion to conduct the sale or to name a substitute trustee to conduct the sale, the combined total paid for legal fees under paragraph (b)(5)(i) of this section and trustee's fees pursuant to paragraph (b)(4) of this section shall not exceed the applicable maximum allowance for legal fees established under paragraph (b)(5)(ii) of this section. If the trustee conducting the sale must be a Government official under local law, or if an individual other than the foreclosing attorney (or any employee of that attorney) is appointed as part of judicial proceedings, and local law also establishes the fees payable for the services of the public or judicially appointed trustee, then those fees will not be subject to the maximum established for legal fees under paragraph (b)(5)(ii) of this section and may be included in the total indebtedness.

(6) The cost of a credit report(s) on the debtor(s), which is (are) to be forwarded to the Secretary in connection with the claim;

(7) Reasonable and customary costs of property inspections;

(8) Any other expense or fee that is approved in advance by the Secretary.

(Authority: 38 U.S.C. 3720(a)(3), 3732)

(c) Any advances or charges enumerated in paragraph (a) or (b) of this section may be included as specified in the holder's accounting to the Secretary, but they are not chargeable to the debtor unless he or she otherwise be liable therefor.

(d) Advances of the type enumerated in paragraph (a) of this section and any

other advances determined by VA to be necessary and proper in order to preserve or protect the security may be authorized by employees designated in § 36.4845(b) in the case of any property constituting the security for a loan acquired by the Secretary or constituting the security for the unpaid balance of the purchase price owing to the Secretary on account of the sale of such property. Such advances shall be secured to the extent legal and practicable by a lien on the property.

(e) Notwithstanding the provisions of paragraph (a) or (b) of this section, holders of condominium loans guaranteed or insured under 38 U.S.C. 3710(a)(6) shall not pay those assessments or charges allocable to the condominium unit which are provided for in the instruments establishing the condominium form of ownership in the absence of the prior approval of the Secretary.

(f)(1) Fees and charges otherwise allowable by this section that accrue after the date specified in paragraph (f)(2) of this section may not be included in a claim under the guaranty.

(2) The date referenced in paragraph (f)(1) of this section will be computed by adding 210 calendar days to the due date of the last paid installment, plus the reasonable period that the Secretary has determined, pursuant to § 36.4822(a), it should have taken to complete the foreclosure. There will also be added to the time period specified in the previous sentence such additional time as the Secretary determines was reasonably necessary to complete the foreclosure if the Secretary determines the holder was unable to complete the foreclosure within the time specified in that section due to Bankruptcy proceedings, appeal of the foreclosure by the debtor, the holder granting forbearance in excess of 30 days at the request of the Secretary, or other factors beyond the control of the holder.

(Authority: 38 U.S.C. 3703(c), 3720, 3732)

§ 36.4815 Loan modifications.

(a) Subject to the provisions of this section, the terms of any guaranteed loan may be modified by written agreement between the holder and the borrower, without prior approval of the Secretary, if all of the following conditions are met:

(1) The loan is in default;

(2) The event or circumstances that caused the default has been or will be resolved and it is not expected to re-occur;

(3) The obligor is considered to be a reasonable credit risk, based on a review by the holder of the obligor's creditworthiness under the criteria specified in § 36.4840, including a current credit report. The fact of the recent default will not preclude the holder from determining the obligor is now a satisfactory credit risk provided the holder determines that the obligor is able to resume regular mortgage installments when the modification becomes effective based upon a review of the obligor's current and anticipated income, expenses, and other obligations as provided in § 36.4840;

(4) At least 12 monthly payments have been paid since the closing date of the loan;

(5) The current owner(s) is obligated to repay the loan, and is party to the loan modification agreement; and

(6) The loan will be reinstated to performing status by virtue of the loan modification.

(b) Without the prior approval of the Secretary, a loan can be modified no more than once in a 3-year period and no more than three times during the life of the loan.

(c) All modified loans must bear a fixed-rate of interest, which may not exceed the Government National Mortgage Association (GNMA) current month coupon rate that is closest to par (100) plus 50 basis points. The rate shall be determined as of the close of business the last business day of the month preceding the date the holder approved the loan modification.

(d) The unpaid balance of the modified loan may be re-amortized over the remaining life of the loan. The loan term may extend the maturity date to the shorter of:

(1) 360 months from the due date of the first installment required under the modification, or

(2) 120 months after the original maturity date of the loan.

(e) Only unpaid principal; accrued interest; deficits in the taxes and insurance impound accounts; and advances required to preserve the lien position, such as homeowner association fees, special assessments, water and sewer liens, etc., may be included in the modified indebtedness. Late fees and other charges may not be capitalized.

(f) Holders shall not charge a processing fee under any circumstances to complete a loan modification. However, late fees and any other actual costs incurred and legally chargeable, including but not limited to the cost of a title insurance policy for the modified loan, but which cannot be capitalized in the modified indebtedness, may be collected directly from the borrower as part of the modification process.

(g) Holders will ensure the first lien status of the modified loan.

(h) The dollar amount of the guaranty may not exceed the greater of:

(1) The original guaranty amount of the loan being modified (but if the modified loan amount is less than the original loan amount, then the amount of guaranty will be equal to the original guaranty percentage applied to the modified loan), or

(2) 25 percent of the loan being modified subject to the statutory maximum specified at 38 U.S.C. 3703(a)(1)(B).

(i) The obligor may not receive any cash back from the modification.

(j) This section does not create a right of a borrower to have a loan modified, but simply authorizes the loan holder to modify a loan in certain situations without the prior approval of the Secretary.

(Authority: 38 U.S.C. 3703(c)(1), 3720)

§ 36.4816 Acceptability of partial payments.

A partial payment is a remittance by or on behalf of the borrower on a loan in default (as defined in § 36.4801) of any amount less than the full amount due under the terms of the loan and security instruments at the time the remittance is tendered.

(a) Except as provided in paragraph (b) of this section, or upon the express waiver of the Secretary, the mortgage holder shall accept any partial payment and either apply it to the mortgagor's account or identify it with the mortgagor's account and hold it in a special account pending disposition. When partial payments held for disposition aggregate a full monthly installment, including escrow, they shall be applied to the mortgagor's account.

(b) A partial payment may be returned to the mortgagor, within 10 calendar days from date of receipt of such payment, with a letter of explanation only if one or more of the following conditions exist:

(1) The property is wholly or partially tenant-occupied and rental payments are not being remitted to the holder for application to the loan account;

(2) The payment is less than one full monthly installment, including escrows and late charge, if applicable, unless the lesser payment amount has been agreed to under a documented repayment plan;

(3) The payment is less than 50 percent of the total amount then due, unless the lesser payment amount has been agreed to under a documented repayment plan;

(4) The payment is less than the amount agreed to in a documented repayment plan;

(5) The amount tendered is in the form of a personal check and the holder has previously notified the mortgagor in writing that only cash or certified remittances are acceptable;

(6) A delinquency of any amount has continued for at least 6 months since the account first became delinquent and no written repayment plan has been arranged;

(7) Foreclosure has been commenced by the taking of the first action required for foreclosure under local law; or

(8) The holder's lien position would be jeopardized by acceptance of the partial payment.

(c) A failure by the holder to comply with the provisions of this paragraph may result in a partial or total loss of guaranty or insurance pursuant to § 36.4828(b), but such failure shall not constitute a defense to any legal action to terminate the loan.

(Authority: 38 U.S.C. 3703(c)(1))

§ 36.4817 Servicer reporting requirements.

(a) Servicers of loans guaranteed by the Secretary shall report the information required by this section to the Secretary electronically. The Secretary shall accept electronic submission from each entity servicing loans guaranteed under 38 U.S.C. chapter 37 not later than the effective date of this rule.

(b) Not later than the seventh calendar day of each month each servicer shall report to the Secretary basic information (loan identification information, payment due date, and unpaid principal balance) for every loan guaranteed by the Secretary currently being serviced by that entity, unless previously reported under paragraph (c)(7) of this section and has not reinstated, terminated, or paid in full.

(c) Servicers shall report to the Secretary the following specific loan events in accordance with the timeframes described for each event. Unless otherwise specified herein, the servicer shall report these events on a monthly basis (i.e., no later than the 7th calendar day of the month following the month in which the event occurred) only for delinquent loans in its portfolio.

(1) Loan paid in full—when the loan obligation has been fully satisfied by receipt of funds and not a servicing transfer. The servicer shall report this event regardless of delinquency status.

(2) Authorized transfer of ownership—when the servicer learns that an authorized transfer of ownership has been completed. The servicer shall report this event regardless of delinquency status.

(3) Release of liability—when an obligor has been released from liability. The servicer shall report this event regardless of delinquency status.

(4) Partial release of security—when the holder has released the lien on a part of the security for the loan pursuant to § 36.4827. The servicer shall report this event regardless of delinquency status.

(5) Servicing transfer (transferring servicer)—when a holder transfers the loan to another servicer.

(6) Servicing transfer (receiving servicer)—when a servicer boards the loan.

(7) Electronic Default Notification (EDN)—when the loan becomes at least 61 days delinquent. The servicer shall report this event no later than the 7th calendar day from when the event occurred. The servicer shall report this event only once per default for delinquent loans in its portfolio.

(8) Delinquency status—when the servicer notifies VA of any updates to the delinquency information on loans for which an EDN has been submitted. The servicer shall report this event monthly (i.e., no later than the 7th calendar day of the month following the month for which the reported information applies) until the default cures or the loan terminates.

(9) Contact information change—when there is a change to the contact information for current owners or a property or mailing address change.

(10) Occupancy status change—when there is a change in property occupancy status.

(11) Bankruptcy filed—when any owner files a petition under the Bankruptcy Code. The servicer shall report this event no later than the 7th calendar day from when the event occurred. The servicer shall report this event only on delinquent loans in its portfolio, if appropriate, or with the EDN when it is reported.

(12) Bankruptcy update—when a significant event related to the bankruptcy has occurred. The servicer shall report this event no later than the 7th calendar day from when the event occurred. The servicer shall report this event only on delinquent loans in its portfolio, if appropriate, or with the EDN when it is reported.

(13) Loss mitigation letter sent—when the servicer sends the loss mitigation letter to the borrower as required by § 36.4850(g)(1)(iv).

(14) Partial payment returned—when the servicer returns a partial payment to the borrower.

(15) Default cured/loan reinstated—when a previously reported default (i.e. an EDN was filed) has cured/loan reinstated.

(16) Default reported to credit bureau—when the servicer notifies the credit bureaus of a defaulted loan or loan termination. The servicer shall report this event only on delinquent loans in its portfolio, and shall report the first occurrence only.

(17) Repayment plan approved—when the servicer approves a repayment plan.

(18) Special forbearance approved—when the servicer approves a special forbearance agreement.

(19) Loan modification approved—when the servicer approves a loan modification.

(20) Loan modification complete—when both the servicer (and/or the holder, where necessary) and the owner(s) have executed the modification agreement.

(21) Compromise sale complete—when a compromise sale closes.

(22) Deed-in-lieu of foreclosure complete—when the servicer records the deed-in-lieu of foreclosure. The servicer shall report this no later than the 7th calendar day from when the event occurred.

(23) Foreclosure referral—when the loan is referred to legal counsel for foreclosure. The servicer shall report this no later than the 7th calendar day from when the event occurred.

(24) Foreclosure sale scheduled—when the foreclosure sale is scheduled. The servicer shall report this no later than the 7th calendar day from when the event occurred.

(25) Results of sale—when the foreclosure sale is complete, the servicer reports the results of the foreclosure sale. The servicer shall report this no later than the 7th calendar day from when the event occurred.

(26) Transfer of custody—when the servicer notifies VA of the holder's intent to convey the property. The servicer shall report this no later than the 15th calendar day from the date of liquidation sale (such as the date of foreclosure sale, date of recordation of a deed-in-lieu of foreclosure, or confirmation/ratification of sale date when required under local practice).

(27) Improper transfer of custody—when the servicer discovers that the conveyance of the property to VA was improper. The servicer shall report this no later than the 7th calendar day from when the error is discovered.

(28) Invalid sale results—when the foreclosure sale is invalid. The servicer shall report this no later than the 7th

calendar day from discovery of the event that invalidated the sale.

(29) Confirmed sale date with no transfer of custody—when the loan is terminated, the property is not conveyed, and the property is located in a confirmation/ratification of sale state.

(30) Basic claim information—when the servicer files a claim under guaranty. The servicer shall report this event within 365 calendar days of loan termination for non-refund claims, and within 60 calendar days of the refund approval date for refund claims.

(31) Refunding Settlement—when VA refunds a loan and the servicer reports the tax and insurance information. The servicer shall report this event within 60 calendar days of the refund approval date.

(Authority: 38 U.S.C. 3703(c), 3732)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0021.)

§ 36.4818 Servicer tier ranking—temporary procedures.

(a) The Secretary shall assign to each servicer a ''Tier Ranking'' based upon the servicer's performance in servicing guaranteed loans. There shall be four tiers, known as tier one, tier two, tier three, and tier four, with tier one being the highest rated and tier four the lowest. Upon the effective date of this regulation, every servicer of loans guaranteed by the Secretary shall be presumed to be in servicer tier two, and shall remain in tier two until the date specified in paragraph (c)(2) of this section.

(b) For purposes of this section, the term ''calendar quarter'' shall mean the 3-month periods ending on March 31, June 30, September 30, and December 31.

(c)(1) No later than 30 calendar days after the last business day of the first calendar quarter occurring after the rules for determining tier rankings take effect, and then not later than 30 calendar days after the last business day of each subsequent calendar quarter, the Secretary shall provide each servicer with an evaluation of their performance under such rules.

(2) No later than 45 calendar days after the last business day of the fourth calendar quarter during which the Secretary evaluates the performance of servicers, and then annually thereafter, VA shall advise each servicer of its tier ranking.

(3) Any entity which begins servicing guaranteed loans after the first calendar quarter occurring after rules for determining tier rankings take effect shall be presumed to be in tier two. The Secretary will evaluate the performance of such servicer as provided in paragraph (c)(1) of this section. The Secretary will advise such servicer of its tier ranking at the time other servicers are advised of their tier rankings pursuant to paragraph (c)(2) of this section, provided the servicer has received evaluations for at least four continuous calendar quarters.

(d) The quarterly evaluation and tier ranking of a servicer shall be deemed to be confidential and privileged and shall not be disclosed by the Secretary to any other party.

(Authority: 38 U.S.C. 3703(c))

§ 36.4819 Servicer loss-mitigation options and incentives.

(a) The Secretary will pay a servicer in tiers one, two, or three an incentive payment for each of the following successful loss-mitigation options or alternatives to foreclosure completed: repayment plans, special forbearance agreements, loan modifications, compromise sales, and deeds-in-lieu of foreclosure. Only one incentive payment will be made with respect to any default required to be reported to the Secretary pursuant to § 36.4817(c). No incentive payment will be made to a servicer in tier four. The options and alternatives are listed in paragraph (b) of this section from top to bottom in their preferred order of consideration (i.e., a hierarchy for review), but VA recognizes that individual circumstances may lead to ''out of the ordinary'' considerations.

(b) The amount of the incentive payment is as follows:

Tier ranking	One	Two	Three	Four
Repayment Plan	$200	$160	$120	$0
Special Forbearance	200	160	120	0
Loan Modification	700	500	300	0
Compromise Sale	1,000	800	600	0
Deed in Lieu of Foreclosure	350	250	150	0

(c) For purposes of this section, a loss-mitigation option or alternative to foreclosure will be deemed successfully completed as follows:

(1) With respect to a repayment plan (as defined in § 36.4801), when the loan reinstates;

(2) With respect to special forbearance (as defined in § 36.4801), when the loan reinstates. If a repayment plan is developed at the end of the forbearance period, then the special forbearance is not eligible for an incentive payment, although the subsequent repayment plan may be eligible upon loan reinstatement;

(3) With respect to a loan modification, when the modification is executed and the loan reinstates;

(4) With respect to a compromise sale, when the claim under guaranty is filed; or

(5) With respect to a deed-in-lieu of foreclosure, when the claim under guaranty is filed.

(d) Incentive payments with respect to repayment plans, special forbearances and loan modifications shall be made no less frequently than monthly. For all other successful loss-mitigation options, incentives shall be paid in the final claim payment.

(e) The Secretary shall reserve the right to stop an incentive payment to a servicer if the servicer fails to perform adequate servicing.

(Authority: 38 U.S.C. 3703(c), 3720, 3722)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0021.)

§ 36.4820 Refunding of loans in default.

(a) Upon receiving a notice of default or a notice under § 36.4817, the Secretary may require the holder upon penalty of otherwise losing the guaranty or insurance to transfer and assign the loan and the security therefore to the Secretary or to another designated by the Secretary upon receipt of payment in full of the balance of the indebtedness remaining unpaid to the date of such assignment. Such assignment may be made without recourse but the transferor shall not thereby be relieved from the provisions of § 36.4828.

(b) If the obligation is assigned or transferred to a third party pursuant to paragraph (a) of this section the Secretary may continue in effect the guaranty or insurance issued with respect to the previous loan in such

manner as to cover the assignee or transferee.

(c) Servicers must deliver to the Secretary all legal documents, including but not limited to proper loan assignments, required as evidence of proper loan transfer within 60 calendar days from the date that VA sends notice to the servicer that VA has decided to refund a loan under this section. Servicers exhibiting a continued failure to provide timely loan transfer documentation may, at the discretion of the Secretary and following advance notice to the servicer, be subject to temporary suspension of all property acquisition and claim payments until all deficiencies identified in the notice provided to the servicer have been corrected.

(Authority: 38 U.S.C. 3703(c) and 3732(a))

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0362.)

§ 36.4821 Service of process.

(a) In any legal or equitable proceeding to which the Secretary is a party (including probate and bankruptcy proceedings) arising from a loan guaranteed, insured, or made, or a property acquired by the Secretary pursuant to title 38, U.S.C. chapter 37, original process and any other process prior to appearance that may be served on the Secretary must be delivered to the VA Regional Counsel located in the jurisdiction in which the proceeding is docketed. Copies of such process will also be served on the Attorney General of the United States and the United States Attorney having jurisdiction over that area. Within the time required by applicable law, or rule of court, the Secretary will cause appropriate special or general appearance to be entered in the case by an authorized attorney.

(Authority: 38 U.S.C. 3703(c) and 3720(a))

(b) After appearance of the Secretary by attorney all process and notice otherwise proper to serve on the Secretary before or after judgment, if served on the attorney of record, shall have the same effect as if the Secretary were personally served within the jurisdiction of the court.

(Authority: 38 U.S.C. 3720, 3732)

§ 36.4822 Loan termination.

(a) For purposes of this part, a holder, using reasonable diligence must complete a foreclosure within the timeframe and in the manner determined by the Secretary. In determining what constitutes allowable time and method for foreclosure, the Secretary shall review allowances for time and method in connection with the foreclosure of single-family housing loans issued by HUD, Fannie Mae, and Freddie Mac, as well as State statutory requirements. The Secretary will review such timeframes annually and, as the Secretary deems necessary, publish in the **Federal Register** a table setting forth the timeframes and methods the Secretary determines to be reasonable. The schedule will reflect the timeframe allowed for the standard, acceptable method for foreclosure proceedings in each State. The use of another method will require prior approval from VA. VA will maintain the loan termination time allowable timeframes on a Web site under VA's control, such as at *http://www.homeloans.va.gov.*

(b)(1) At least 30 days prior to the scheduled or anticipated date of the liquidation sale, the holder must request that VA assign an appraiser to conduct a liquidation appraisal.

(2) If the holder (or its authorized servicing agent) has been approved by the Secretary to process liquidation appraisals under 38 CFR 36.4848, the appraiser shall forward the liquidation appraisal report directly to the holder for a determination of the fair market value of the property pursuant to § 36.4848.

(3) If the holder (or its authorized servicing agent) has not been approved by the Secretary to process liquidations appraisals under 38 CFR 36.4848, the Secretary shall review the appraisal and determine the fair market value of the property. The Secretary will provide the holder with a statement of the fair market value.

(4)(i) Except as provided in paragraph (b)(4)(ii) of this section, a liquidation appraisal or statement of fair market value issued pursuant to paragraph (b)(3) of this section will be valid for 180 calendar days.

(ii) The Secretary may specify in writing a shorter validity period, not less than 90 calendar days, for a liquidation appraisal or statement of fair market value if rapidly-changing market conditions in the area where the property is located make such shorter validity period in the best fiscal interests of the United States.

(c) Prior to the liquidation sale, the holder shall compute the net value of the property securing the guaranteed loan by subtracting the estimated costs to the Secretary for the acquisition and disposition of the property from the fair market value, as determined under paragraph (b) of this section. Those costs will be calculated using the percentage derived by the Secretary and published in the **Federal Register** pursuant to § 36.4801.

(d) If the holder learns of any material damage to the property occurring after the appraisal and prior to the liquidation sale, the impact of such damage on the fair market value must be determined in consultation with the fee appraiser, and the net value adjusted accordingly.

(e)(1) A holder may approve a compromise sale of the property securing the loan without the prior approval of the Secretary provided that:

(i) The holder has determined the loan is insoluble;

(ii) The credit to the indebtedness (consisting of the net proceeds from the compromise sale and any waiver of indebtedness by the holder) must equal or exceed the net value of the property securing the loan; and

(iii) The current owner of the property securing the loan will not receive any proceeds from the sale of the property.

(2) A holder may request advance approval from the Secretary for a compromise sale notwithstanding that all of the conditions specified in paragraph (e)(1) of this section cannot be met if the holder believes such compromise sale would be in the best interests of the veteran and the Secretary.

(f)(1) A holder may accept a deed voluntarily tendered by the current owner of the property securing the loan in lieu of conducting a foreclosure without the prior approval of the Secretary provided that:

(i) The holder has determined the loan is insoluble;

(ii) The holder has computed the net value of the property securing the loan pursuant to paragraph (c) of this section;

(iii) The holder has considered a compromise sale pursuant to paragraph (e) of this section and determined such compromise sale is not practical; and,

(iv) The holder has determined the current owner of the property can convey clear and marketable title to the property that would meet the standard stated in paragraph (d)(5) of § 36.4823.

(2) A holder may request advance approval from the Secretary for a deed-in-lieu of foreclosure notwithstanding that all of the conditions specified in paragraph (f)(1) of this section cannot be met if the holder believes such deed-in-lieu would be in the best interests of the veteran and the Secretary.

(Authority: 38 U.S.C. 3703(c), 3732)

§ 36.4823 Election to convey security.

(a) If the holder acquires the property that secured the guaranteed loan at the liquidation sale or through acceptance of a deed-in-lieu of foreclosure and if, under 38 U.S.C. 3732(c), the Secretary may accept conveyance of the property,

the holder must notify the Secretary by electronic means no later than 15 calendar days after the date of liquidation sale (i.e., the event which fixes the rights of the parties in the property, such as the date of foreclosure sale, date of recordation of a deed-in-lieu of foreclosure, or confirmation/ratification of sale date when required under local practice) that the holder elects to convey the property to the Secretary. The Secretary will not accept conveyance of the property if the holder fails to notify the Secretary of its election within such 15 calendar days. In computing the eligible indebtedness under 38 U.S.C. 3732(c), the holder may follow the alternative procedure described in paragraph (b) of this section.

(b) If the calculation by the holder shows that the net value is equal to or less than the unguaranteed portion of the loan (i.e., the total indebtedness minus VA's maximum claim payable under the guaranty), this would preclude conveyance under 38 U.S.C. 3732(c). However, the holder may desire to convey the property to VA and may decide to waive a portion of the indebtedness to the extent that the property may be conveyed under 38 U.S.C. 3732(c). In such a case, the holder must provide the notice described in paragraph (a) of this section, and must subsequently waive that portion of the total indebtedness remaining after application of the net value amount and VA's guaranty claim payment. The holder must send the borrower(s) a notice describing the amount of indebtedness that has been waived no later than 15 calendar days after receipt of the guaranty claim.

(c) The holder, in accounting to the Secretary in connection with the conveyance of any property pursuant to this section, may include as a part of the indebtedness all actual expenses or costs of the proceedings, paid by the holder, within the limits defined in § 36.4814. In connection with the conveyance or transfer of property to the Secretary the holder may include in accounting to the Secretary the following expense items if actually paid by the holder, in addition to the consideration payable for the property under 38 U.S.C. 3732(c):

(1) State and documentary stamp taxes as may be required.

(2) Amount expended for taxes, special assessments, including such payments which are specified in paragraph (d)(4) of this section.

(3) Recording fees.

(4) Any other expenditures in connection with the property which are approved by the Secretary, including, but not limited to, the cost of a title policy insuring title in the name of the Secretary of Veterans Affairs.

(d) The conveyance or transfer of any property to the Secretary pursuant to this section shall be subject to the following provisions:

(1) The notice of the holder's election to convey the property to the Secretary shall state the amount of the holder's successful bid and shall state the insurance coverage then in force, specifying for each policy, the name of the insurance company, the hazard covered, the amount, and the expiration date. With respect to a voluntary conveyance to the holder in lieu of foreclosure, the amount of the holder's successful bid shall be deemed to be the lesser of the net value of the property or the total indebtedness.

(2) Coincident with the notice of election to convey or transfer the property to the Secretary or with the acquisition of the property by the holder, following such notice, whichever is later, the holder shall request endorsements on all insurance policies naming the Secretary as an assured, as his/her interest may appear. Such insurance policies shall be forwarded to the Secretary at the time of the conveyance or transfer of the property to the Secretary or as soon after that time as feasible. If insurers cancel policies, holders must properly account for any unearned premiums refunded by the insurer.

(3) Occupancy of the property by anyone properly in possession by virtue of and during a period of redemption, or by anyone else unless under a claim of title which makes the title sought to be conveyed by the holder of less dignity or quality than that required by this section, shall not preclude the holder from conveying or transferring the property to the Secretary. Except with the prior approval of the Secretary, the holder shall not rent the property to a new tenant, nor extend the term of an existing tenancy on other than a month-to-month basis.

(4) The notice shall provide property tax information to include all taxing authority property identification numbers. Any taxes, special assessments or ground rents due and payable within 30 days after date of conveyance or transfer to the Secretary must be paid by the holder.

(5)(i) Each conveyance or transfer of real property to the Secretary pursuant to this section shall be acceptable if:

(A) The holder thereby covenants or warrants against the acts of the holder and those claiming under the holder (e.g., by special warranty deed); and

(B) It vests in the Secretary or will entitle the Secretary to such title as is or would be acceptable to prudent lending institutions, informed buyers, title companies, and attorneys, generally, in the community in which the property is situated.

(ii) Any title will not be unacceptable to the Secretary by reason of any of the limitations on the quantum or quality of the property or title stated in § 36.4854(b), *Provided,* that:

(A) At the time of conveyance or transfer to the Secretary there has been no breach of any conditions affording a right to the exercise of any reverter.

(B) With respect to any such limitations which came into existence subsequent to the making of the loan, full compliance was had with the requirements of § 36.4827.

(iii) The acceptability of a conveyance or transfer pursuant to the requirements of this paragraph will generally be established by delivery to the Secretary of the following evidence of title showing that title to the property of the quality specified in this paragraph (d)(5) is or will be vested in the Secretary:

(A) A copy of the deed or document evidencing transfer of interest and title at the liquidation sale;

(B) A special warranty deed conveying the property to the Secretary;

(C) Origination Deed of Trust or Mortgage;

(D) Original or Copy of Mortgagee's Title Insurance Policy from Loan Origination (except in Iowa, where a title abstract is required);

(E) Owner's Title Insurance Policy issued after loan termination in the name of the Secretary (except in Iowa, where a title abstract is required);

(F) Loan Assignments;

(G) Appointment of Substitute Trustee (where required as part of the termination process);

(H) Estoppel Affidavit for deed in lieu of foreclosure, if required by State law and appropriate language cannot be included in the deed in lieu of foreclosure; and/or

(I) Any evidence that the Secretary may reasonably require.

(iv) In lieu of such title evidence listed in paragraph (d)(5)(iii) of this section, the Secretary will accept a conveyance or transfer with general warranty with respect to the title from a holder described in 38 U.S.C. 3702(d) or from a holder of financial responsibility satisfactory to the Secretary.

(6) Except with respect to matters covered by any covenants or warranties of the holder, the acceptance by the Secretary of a conveyance or transfer by the holder shall conclude the

responsibility of the holder to the Secretary under the regulations of this subpart with respect to the title. In the event of the subsequent discovery of title defects, the Secretary shall have no recourse against the holder with respect to such title other than by reason of such covenants or warranties.

(7) As between the holder and the Secretary, the responsibility for any loss due to damage to or destruction of the property or due to personal injury sustained in respect to such property shall be governed by the provisions of this paragraph and paragraph (d)(11) of this section. Ordinary wear and tear excepted, the holder shall bear such risk of loss from the date of acquisition by the holder to the date such risk of loss is assumed by the Secretary. Such risk of loss is assumed by the Secretary from the date of receipt of the holder's election to convey or transfer the property to the Secretary. The amount of any loss chargeable to the holder may be deducted from the amount payable by the Secretary at the time the property is transferred. In any case where pursuant to the VA regulations rejection of the title is legally proper, the Secretary may surrender custody of the property as of the date specified in the Secretary's notice to the holder. The Secretary's assumption of such risk shall terminate upon such surrender.

(8) The conveyance should be made to ''Secretary of Veterans Affairs, an Officer of the United States.'' The name of the incumbent Secretary should not be included unless State law requires naming a real person.

(9) The holder shall not be liable to the Secretary for any portion of the paid or unpaid taxes, special assessments, ground rents, insurance premiums, or other similar items. The holder shall be liable to the Secretary for all penalties and interest associated with taxes not timely paid by the holder prior to conveyance.

(10) The Secretary shall be entitled to all rentals and other income collected from the property and to any insurance proceeds or refunds subsequent to the date of acquisition by the holder.

(11) In respect to a property which was the security for a condominium loan guaranteed or insured under 38 U.S.C. 3710(a)(6) the responsibility for any loss due to damage to or destruction of the property or due to personal injury sustained in respect to such property shall in no event pass to the Secretary until the Secretary expressly assumes such responsibility or until conveyance of the property to the Secretary, whichever first occurs. The holder shall have the right to convey such property to the Secretary only if the property (including elements of the development or project owned in common with other unit owners) is undamaged by fire, earthquake, windstorm, flooding or boiler explosion. The absence of a right in the holder to convey such property which is so damaged shall not preclude a conveyance, if the Secretary agrees in a given case to such a conveyance upon completion of repairs within a specified period of time and such repairs are so completed and the conveyance is otherwise in order.

(e) Except as provided in paragraph (d)(6) of this section, the provisions of this section shall not be in derogation of any rights which the Secretary may have under § 36.4828. The Under Secretary for Benefits, or the Director, Loan Guaranty Service, may authorize any deviation from the provisions of this section, within the limitations prescribed in 38 U.S.C. chapter 37, which may be necessary or desirable to accomplish the objectives of this section if such deviation is made necessary by reason of any laws or practice in any State or Territory or the District of Columbia, *Provided,* that no such deviation shall impair the rights of any holder not consenting to the deviation with respect to loans made or approved prior to the date the holder is notified of such action.

(Authority: 38 U.S.C. 3720, 3732)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0381.)

§ 36.4824 Guaranty claims; subsequent accounting.

(a) Subject to the limitation that the total amounts payable shall in no event exceed the amount originally guaranteed, or in the case of a modified loan, such amount as may have been increased under the provisions of § 36.4815(h)(2), the amount payable on a claim for the guaranty shall be the percentage of the loan originally guaranteed, or the percentage as adjusted under § 36. 4815(h)(2), whichever is applicable, applied to the sum of:

(1) The unpaid principal as of the date of the liquidation sale;

(2) Allowable expenses/advances as described in § 36.4814; and

(3) The lesser of:

(i) The unpaid interest as of the date of the liquidation sale; or

(ii) The unpaid interest for the reasonable period that the Secretary has determined, pursuant to § 36.4822(a), it should have taken to complete the foreclosure, plus 210 days from the due date of the last paid installment. This amount will be increased if the Secretary determines the holder was unable to complete the foreclosure within the time specified in this paragraph due to Bankruptcy proceedings, appeal of the foreclosure by the debtor, the holder granting forbearance in excess of 30 days at the request of the Secretary, or other factors beyond the control of the holder.

(b) Deposits or other credits or setoffs legally applicable to the indebtedness shall be applied in reduction of the indebtedness on which the claim is based. Any escrowed or earmarked funds not subject to superior claims of third persons must likewise be so applied.

(c)(1) Credits accruing from the proceeds of a liquidation sale shall be reported to the Secretary incident to claim submission, and the amount payable on the claim shall in no event exceed the remaining balance of the indebtedness.

(2) The amount payable under the guaranty shall be computed applying the formulae in 38 U.S.C. 3732(c). With respect to a voluntary conveyance to the holder in lieu of foreclosure, the holder shall be deemed to have acquired the property at the liquidation sale for the lesser of the net value of the property or the total indebtedness.

(d)(1)(i) Except as provided in paragraph (d)(1)(ii) of this section, holders shall file a claim for payment under the guaranty electronically no later than 1 year after the completion of the liquidation sale. For purposes of this section, the liquidation sale will be considered completed when:

(A) The last act required under State law is taken to make the liquidation sale final, but excluding any redemption period permitted under State law;

(B) If a holder accepts a voluntary conveyance of the property in lieu of foreclosure, the date of recordation of the deed to the holder or the holder's designee; or

(C) In the case of a sale of the property to a third party for an amount less than is sufficient to repay the unpaid balance on the loan where the holder has agreed in advance to release the lien in exchange for the proceeds of such sale, the date of settlement of such sale.

(ii) With respect to any liquidation sale completed prior to February 1, 2008, all claims must be submitted no later than February 2, 2009.

(2) If additional information becomes known to a holder after the filing of a guaranty claim, the holder may file a supplemental claim provided that such supplemental claim is filed within the time period specified in paragraph (d)(1) of this section.

(3) No claim under a guaranty shall be payable unless it is submitted within the time period specified in paragraph (d)(1) of this section.

(4) A claim shall be submitted to VA electronically on the VA Loan Electronic Reporting Interface system.

(5) Supporting documents will not be submitted with the claim, but must be retained by the servicer and are subject to inspection as provided in § 36.4833 of this title.

(e) In the event that VA does not approve payment of any item submitted under a guaranty claim, VA shall notify the holder electronically what items are being denied and the reasons for such denial. The holder may, within 30 days after the date of such denial notification, submit an electronic request to VA that one or more items that were denied be reconsidered. The holder must present any additional information justifying payment of items denied.

(Authority: 38 U.S.C. 3703(c), 3720, 3732)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0362.)

§ 36.4825 Computation of indebtedness.

In computing the indebtedness for the purpose of filing a claim for payment of a guaranty or for payment of an insured loss, or in the event of a transfer of the loan under § 36.4820(a), or other accounting to the Secretary, the holder shall not be entitled to treat repayments theretofore made as liquidated damages, or rentals, or otherwise than as payments on the indebtedness, notwithstanding any provision in the note, or mortgage, or otherwise, to the contrary.

(Authority: 38 U.S.C. 3703(c), 3720, 3732)

§ 36.4826 Subrogation and indemnity.

(a) The Secretary shall be subrogated to the contract and the lien or other rights of the holder to the extent of any sum paid on a guaranty or on account of an insured loss, which right shall be junior to the holder's rights as against the debtor or the encumbered property until the holder shall have received the full amount payable under the contract with the debtor. No partial or complete release by a creditor shall impair the rights of the Secretary with respect to the debtor's obligation.

(b) The holder, upon request, shall execute, acknowledge and deliver an appropriate instrument tendered for that purpose, evidencing any payment received from the Secretary and the Secretary's resulting right of subrogation.

(c) The Secretary shall cause the instrument required by paragraph (b) of this section to be filed for record in the office of the recorder of deeds, or other appropriate office of the proper county, town or State, in accordance with the applicable State law. The filing or failure to file such instrument for record shall have the legal results prescribed by the applicable law of the State where the real or personal property is situated, with respect to filing or failure to so file mortgages and other lien instruments and assignments thereof. The references herein to ''filing for record'' include ''registration'' or any similar transaction, by whatever name designated when title to the encumbered property has been ''registered'' pursuant to a Torrens or other similar title registration system provided by law.

(d) As a condition to paying a claim for an insured loss the Secretary may require that the loan, including any security or judgment held therefor, be assigned to the extent of such payment, and if any claim has been filed in bankruptcy, insolvency, probate, or similar proceedings such claim may likewise be required to be so assigned.

(e) Any amounts paid by the Secretary on account of the liabilities of any veteran guaranteed or insured under the provisions of 38 U.S.C. chapter 37 shall constitute a debt owing to the United States by such veteran. Before a liquidation sale, an official authorized to act for the Secretary under provisions of § 36.4845 may approve a complete or partial release of the Secretary's right to collect a debt owing to the United States under this paragraph and/or under paragraph (a) of this section as follows:

(1) *Complete release.* VA will approve a complete release if an official authorized to act for the Secretary under § 36.4845 determines that all of the following are true:

(i) The loan default was caused by circumstances beyond the control of the obligor; and

(ii) There are no indications of fraud, misrepresentation or bad faith on the part of the obligor in obtaining the loan or in connection with the loan default; and

(iii) The obligor cooperated with VA in exploring all realistic alternatives to termination of the loan through foreclosure, and, either:

(A) Review of the obligor's current financial situation and prospective earning potential and obligations indicates there are no realistic prospects that the obligor could repay all or part of the anticipated debt within six years after the liquidation sale and still provide the necessities of life for himself or herself and his or her family; or,

(B) In consideration for a release of the Secretary's collection rights the obligor completes, or VA is enabled to authorize, an action which reduces the Government's claim liability sufficiently to offset the amount of the anticipated indebtedness which would otherwise be established pursuant to this paragraph and likely be collectable by VA after foreclosure in view of the obligor's financial situation. Such actions would include termination of the loan by means of a deed-in-lieu of foreclosure, private sale of the property for less than the indebtedness with a reduced claim paid by VA for the balance due the loan holder, or enabling VA to authorize the holder to elect a more expeditious foreclosure procedure when such an election would result in the legal release of the obligor's liability; or

(C) The obligor being released is not the current titleholder to the property and there are no indications of fraud, misrepresentation, or bad faith on the obligor's part in disposing of the property.

(2) *Partial release.* In the event of a partial release, the amount of indebtedness established will be such that the obligor's financial situation permits repayment of the debt to the Government in regular monthly installments of principal plus interest over a five year period commencing within one year after the date the promissory note is executed, except in those cases in which a lump sum settlement appears to be in the best interest of the Government or in which it appears the obligor may reasonably expect significant changes in his or her financial situation which would permit higher payments to be made during later periods of the life of the note. VA may authorize a partial release if an official authorized to act for the Secretary under § 36.4845 determines that all of the following are true:

(i) The loan default was caused by circumstances beyond the control of the obligor; and,

(ii) There are no indications of fraud, misrepresentation or bad faith on the part of the obligor in obtaining the loan or in connection with the loan default; and,

(iii) The obligor cooperated with VA in exploring all realistic alternatives to termination of the loan through foreclosure; and,

(iv) Review of the obligor's current financial situation and prospective earning potential and obligations indicates there are no realistic prospects that the obligor could repay all of the anticipated debt within six years of the liquidation sale while providing the

necessities of life for himself or herself and his or her family; and,

(v) The obligor executes a written agreement acknowledging his or her liability to VA under this paragraph and executes a promissory note which provides for regular amortized monthly payments of an amount determined by VA in accordance with paragraph (e)(3) of this section including interest on the total amount payable at the rate in effect for Loan Guaranty liability accounts at the time of execution, or, the obligor agrees to other terms of repayment acceptable to VA including payment of a lump sum in settlement of his or her obligation under this paragraph.

(3) *Review of obligor's financial situation.* For purposes of authorizing a complete or partial release under this paragraph, a VA official reviewing an obligor's financial situation will consider all of the following:

(i) The obligor's current and anticipated family income based on employment skills and experience;

(ii) The obligor's current short-term and long-term financial obligations, including the obligation to repay the Government which must be afforded consideration at least equal to his or her consumer debt obligations;

(iii) A current credit report on the obligor;

(iv) The obligor's assets and net worth; and

(v) The required balance available for family support used in underwriting VA guaranteed loans in the area.

(4) Determinations made under paragraphs (e)(1) and (2) of this section are intended for the benefit of the Government in reducing the amount of claim payable by VA and/or avoiding the establishment of uncollectible debts owing to the United States. Such determinations are discretionary on the part of VA and shall not constitute a defense to any legal action to terminate the loan nor vest any appellate right in an obligor which would require further review of the case.

(Authority: 38 U.S.C. 501, 3703(c)(1), 5302)

(f) Whenever any veteran disposes of residential property securing a guaranteed or insured loan obtained by him or her under 38 U.S.C. chapter 37, and for which the commitment to make the loan was made prior to March 1, 1988, the Secretary, upon application made by such veteran, shall issue to the veteran a release relieving him or her of all further liability to the Secretary on account of such loan (including liability for any loss resulting from any default of the transferee or any subsequent purchaser of such property) if the Secretary has determined, after such investigation as may be deemed appropriate, that there has been compliance with the conditions prescribed in 38 U.S.C. 3713. The assumption of full liability for repayment of the loan by the transferee of the property must be evidenced by an agreement in writing in such form as the Secretary may require. Release of the veteran from liability to the Secretary will not impair or otherwise affect the Secretary's guaranty or insurance liability on the loan, or the liability of the veteran to the holder. Any release of liability granted to a veteran by the Secretary shall inure to the spouse of such veteran. The release of the veteran from liability to the Secretary will constitute the Secretary's prior approval to a release of the veteran from liability on the loan by the holder thereof.

(Authority: 38 U.S.C. 3713)

(g) If any veteran disposes of residential property securing a guaranteed or insured loan obtained under 38 U.S.C. chapter 37, without receiving a release from liability with respect to such loan under 38 U.S.C. 3713 and a default subsequently occurs which results in liability of the veteran to the Secretary on account of the loan, the Secretary may relieve the veteran of such liability if he determines that:

(1) A transferee either immediate or remote is legally liable to the Secretary for the debt of the original veteran-borrower established after the termination of the loan, and

(2) The original loan was current at the time such transferee acquired the property, and

(3) The transferee who is liable to the Secretary is found to have been a satisfactory credit risk at the time he or she acquired the property.

(h)(1) If a veteran or any other person disposes of residential property securing a guaranteed or insured loan for which a commitment was made on or after March 1, 1988, and the veteran or other person notifies the loan holder in writing before disposing of the property, the veteran or other person shall be relieved of all further liability to the Secretary with respect to the loan (including liability for any loss resulting from any default of the purchaser or any subsequent owner of the property) and the application for assumption shall be approved if the holder determines that:

(i) The proposed purchaser is creditworthy;

(ii) The proposed purchaser is contractually obligated to assume the loan and the liability to indemnify the Department of Veterans Affairs for the amount of any claim paid under the guaranty as a result of a default on the loan, or has already done so; and

(iii) The payments on the loan are current.

(2) Should these requirements be satisfied, the holder may also release the veteran or other person from liability on the loan. This does not apply if the approval for the assumption is granted upon special appeal to avoid immediate foreclosure.

(i) If a veteran requests a release of liability under paragraph (f) of this section, or if a borrower requests a release of liability pursuant to § 36.4809(c)(1)(vii), a holder described in the first sentence of § 36.4803(l)(1)(i) is authorized to and must make all decisions regarding the credit-worthiness of the transferee, subject to the right of a transferee to appeal any denial to the Secretary within 30 days of being notified in writing of the denial by the holder or servicer. The procedures and fees specified in §§ 36.4803(l)(1)(i) and 36.4813(d)(8) applicable to decisions under 38 U.S.C. 3714 shall also apply to decisions specified in this paragraph.

(Authority: 38 U.S.C. 3703(c), 3713 and 3714)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0112.)

§ 36.4827 Release of security.

(a)(1) Except upon full payment of the indebtedness, or except as provided in paragraph (a)(2) of this section or in paragraphs (e) and (f) of § 36.4822, the holder shall not release a lien or other right in or to real property held as security for a guaranteed or insured loan, or grant a fee or other interest in such property, without prior approval of the Secretary.

(2) The holder may, without the prior approval of the Secretary, release the lien on a portion of the property securing the loan provided:

(i) The holder has obtained an appraisal from the Secretary showing the value of the security prior to the partial release of the lien and the value of the security on which the lien will remain;

(ii) The portion of the property still subject to the lien is fit for dwelling purposes; and

(iii) The loan-to-value ratio after the partial release of the lien:

(A) Will be not more than 80 percent; or

(B) If the loan-to-value ratio after the partial release of the lien is 80 percent or higher, any proceeds received as consideration from the partial release of the lien shall be applied to the unpaid loan balance.

(b) A holder may release from the lien personal property including crops without the prior approval of the Secretary.

(c) Failure of the holder to comply with the provisions of this section shall not in itself affect the validity of the title of a purchaser to the property released.

(d) The release of the personal liability of any obligor on a guaranteed or insured obligation resultant from the act or omission of any holder without the prior approval of the Secretary shall release the obligation of the Secretary as guarantor or insurer, except when such act or omission consists of:

(1) Failure to establish the debt as a valid claim against the assets of the estate of any deceased obligor, provided no lien for the guaranteed or insured debt is thereby impaired or destroyed; or

(2) An election and appropriate prosecution of legally available effective remedies with respect to the repossession or the liquidation of the security in any case, irrespective of the identity or the survival of the original or of any subsequent debtor, if holder shall have given such notice as required by § 36.4817 and if, after receiving such notice, the Secretary shall have failed to notify the holder within 15 days to proceed in such manner as to effectively preserve the personal liability of the parties liable, or such of them as the Secretary indicates in such notice to the holder; or

(3) The release of an obligor, or obligors, from liability on an obligation secured by a lien on property, which release is an incident of and contemporaneous with the sale of such property to an eligible veteran who assumed such obligation, which assumed obligation is guaranteed on the assuming veteran's account pursuant to 38 U.S.C. chapter 37; or

(4) The release of an obligor or obligors as provided in § 36.4815; or, the release of an obligor, or obligors, incident to the sale of property securing the loan which the holder is authorized to approve under the provisions of 38 U.S.C. 3714.

(Authority: 38 U.S.C. 3714)

§ 36.4828 Partial or total loss of guaranty or insurance.

(a) Subject to the incontestable provisions of 38 U.S.C. 3721 as to loans guaranteed or insured on or subsequent to July 1, 1948, there shall be no liability on account of a guaranty or insurance, or any certificate or other evidence thereof, with respect to a transaction in which a signature to the note, the mortgage, or any other loan papers, or the application for guaranty or insurance is a forgery; or in which the certificate of discharge or the certificate of eligibility is counterfeited, or falsified, or is not issued by the Government.

(1) Except as to a holder who acquired the loan instrument before maturity, for value, and without notice, and who has not directly or by agent participated in the fraud, or in the misrepresentation hereinafter specified, any willful and material misrepresentation or fraud by the lender, or by a holder, or the agent of either, in procuring the guaranty or the insurance credit, shall relieve the Secretary of liability, or, as to loans guaranteed or insured on, or subsequent to July 1, 1948, shall constitute a defense against liability on account of the guaranty or insurance of the loan in respect to which the willful misrepresentation, or the fraud, is practiced: *Provided*, that if a misrepresentation, although material, is not made willfully, or with fraudulent intent, it shall have only the consequences prescribed in paragraphs (b) and (c) of this section.

(2) [Reserved]

(b) In taking security required by 38 U.S.C. chapter 37 and the regulations concerning guaranty or insurance of loans to veterans, a holder shall obtain the required lien on property the title to which is such as to be acceptable to prudent lending institutions, informed buyers, title companies, and attorneys, generally, in the community in which the property is situated: *Provided*, that a title will not be unacceptable by reason of any of the limitations on the quantum or quality of the property or title stated in § 36.4854(b) and if such holder fails in this respect or fails to comply with 38 U.S.C. chapter 37 and the regulations concerning guaranty or insurance of loans to veterans, then no claim on the guaranty or insurance shall be paid on account of the loan with respect to which such failure occurred, or in respect to which an unwillful misrepresentation occurred, until the amount by which the ultimate liability of the Secretary would thereby be increased has been ascertained. The burden of proof shall be upon the holder to establish that no increase of ultimate liability is attributable to such failure or misrepresentation. The amount of increased liability of the Secretary shall be offset by deduction from the amount of the guaranty or insurance otherwise payable, or if consequent upon loss of security shall be offset by crediting to the indebtedness the amount of the impairment as proceeds of the sale of security in the final accounting to the Secretary. To the extent the loss resultant from the failure or misrepresentation prejudices the Secretary's right of subrogation acceptance by the holder of the guaranty or insurance payment shall subordinate the holder's right to those of the Secretary. Adjustments under this section may be made for failure to comply with:

(1) Obtaining and retaining a lien of the dignity prescribed on all property upon which a lien is required by 38 U.S.C. chapter 37 or the regulations concerning guaranty or insurance of loans to veterans,

(2) Inclusion of power to substitute trustees (§ 36.4830),

(3) The procurement and maintenance of insurance coverage (§ 36.4829),

(4) Any notice required by § 36.4817,

(5) The release, conveyance, substitution, or exchange of security (§ 36.4827),

(6) Lack of legal capacity of a party to the transaction incident to which the guaranty or the insurance is granted (§ 36.4831),

(7) Failure of the lender to see that any escrowed or earmarked account is expended in accordance with the agreement,

(8) The taking into consideration of limitations upon the quantum or quality of the estate or property (§ 36.4854(b)),

(9) Any other requirement of 38 U.S.C. chapter 37 or the regulations concerning guaranty or insurance of loans to veterans which does not by the terms of said chapter or the regulations concerning guaranty or insurance of loans to veterans result in relieving the Secretary of all liability with respect to the loan,

(c) If after the payment of a guaranty or an insurance loss, or after a loan is transferred pursuant to § 36.4820(a), the fraud, misrepresentation or failure to comply with the regulations in this subpart as provided in this section is discovered and the Secretary determines that an increased loss to the government resulted therefrom the transferor or person to whom such payment was made shall be liable to the Secretary for the amount of the loss caused by such misrepresentation or failure.

(Authority: 38 U.S.C. 3703 and 3720)

§ 36.4829 Hazard insurance.

The holder shall require insurance policies to be procured and maintained in an amount sufficient to protect the security against the risks or hazards to which it may be subjected to the extent customary in the locality. All moneys received under such policies covering payment of insured losses shall be applied to restoration of the security or to the loan balance. Flood insurance will be required on any building or

personal property securing a loan at any time during the term of the loan that such security is located in an area identified by the Federal Emergency Management Agency as having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act, as amended. The amount of flood insurance must be at least equal to the lesser of the outstanding principal balance of the loan or the maximum limit of coverage available for the particular type of property under the National Flood Insurance Act, as amended. The Secretary cannot guarantee a loan for the acquisition or construction of property located in an area identified by the Federal Emergency Management Agency as having special flood hazards unless the community in which such area is situated is then participating in the National Flood Insurance Program.

(Authority: 38 U.S.C. 3703(c)(1), 42 U.S.C. 4106(a))

§ 36.4830 Substitution of trustees.

In jurisdictions in which valid, any deed of trust or mortgage securing a guaranteed or insured loan, if it names trustees, or confers a power of sale otherwise, shall contain a provision empowering any holder of the indebtedness to appoint substitute trustees, or other person with such power to sell, who shall succeed to all the rights, powers and duties of the trustees, or other person, originally designated.

(Authority: 38 U.S.C. 3703(c)(1))

§ 36.4831 Capacity of parties to contract.

Nothing in §§ 36.4800 through 36.4880 shall be construed to relieve any lender of responsibility otherwise existing, for any loss caused by the lack of legal capacity of any person to contract, convey, or encumber, or caused by the existence of other legal disability or defects invalidating, or rendering unenforceable in whole or in part, either the loan obligation or the security therefor.

(Authority: 38 U.S.C. 3703(c)(1))

§ 36.4832 Geographical limits.

Any real property purchased, constructed, altered, improved, or repaired with the proceeds of a guaranteed or insured loan shall be situated within the United States which for purposes of 38 U.S.C. chapter 37 is here defined as the several States, Territories and possessions, and the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Northern Mariana Islands.

(Authority: 38 U.S.C. 3703(c)(1))

§ 36.4833 Maintenance of records.

(a)(1) The holder shall maintain a record of the amounts of payments received on the obligation and disbursements chargeable thereto and the dates thereof, including copies of bills and receipts for such disbursements. These records shall be maintained until the Secretary ceases to be liable as guarantor or insurer of the loan, or, if the Secretary has paid a claim on the guaranty, until 3 years after such claim was paid. For the purpose of any accounting with the Secretary or computation of a claim, any holder who fails to maintain such record and, upon request, make it available to the Secretary for review shall be presumed to have received on the dates due all sums which by the terms of the contract are payable prior to date of claim for default, or to have not made the disbursement for which reimbursement is claimed, and the burden of going forward with evidence and of ultimate proof of the contrary shall be on such holder.

(2) The holder shall maintain records supporting their decision to approve any loss mitigation option for which an incentive is paid in accordance with § 36.4819(a). Such records shall be retained a minimum of 3 years from the date of such incentive payment and shall include, but not be limited to, credit reports, verifications of income, employment, assets, liabilities, and other factors affecting the obligor's credit worthiness, work sheets, and other documents supporting the holder's decision.

(3) For any loan where the claim on the guaranty was paid on or after February 1, 2008, or action described in paragraph (a)(2) of this section was taken after February 1, 2008, holders shall submit any documents described in paragraph (a)(1) or (a)(2) of this section to the Secretary in electronic form; i.e., an image of the original document in .jpg, .gif, .pdf, or a similar widely accepted format.

(b) The lender shall retain copies of all loan origination records on a VA-guaranteed loan for at least two years from the date of loan closing. Loan origination records include the loan application, including any preliminary application, verifications of employment and deposit, all credit reports, including preliminary credit reports, copies of each sales contract and addendums, letters of explanation for adverse credit items, discrepancies and the like, direct references from creditors, correspondence with employers, appraisal and compliance inspection reports, reports on termite and other inspections of the property, builder change orders, and all closing papers and documents.

(Authority: 38 U.S.C. 501, 3703(c)(1))

(c) The Secretary has the right to inspect, examine, or audit, at a reasonable time and place, the records or accounts of a lender or holder pertaining to loans guaranteed or insured by the Secretary.

(Authority: 38 U.S.C. 3703(c)(1))

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0515.)

§ 36.4835 Delivery of notice.

Except where otherwise specified in this part, any notice required by §§ 36.4800 to 36.4880 to be given the Secretary must be in writing or such other communications medium as may be approved by an official designated in § 36.4845 and delivered, by mail or otherwise, to the VA office at which the guaranty or insurance was issued, or to any changed address of which the holder has been given notice. Such notice must plainly identify the case by setting forth the name of the original veteran-obligor and the file number assigned to the case by the Secretary, if available, or otherwise the name and serial number of the veteran. If mailed, the notice shall be by certified mail when so provided by §§ 36.4800 to 36.4880.

(Authority: 38 U.S.C. 3703(c)(1))

§ 36.4836 [Reserved]

§ 36.4837 Conformance of loan instruments.

Regulations issued under 38 U.S.C. chapter 37 and in effect on the date of any loan which is submitted and accepted or approved for a guaranty or for insurance thereunder, shall govern the rights, duties, and liabilities of the parties to such loan and any provisions of the loan instruments inconsistent with such regulations are hereby amended and supplemented to conform thereto.

(Authority: 38 U.S.C. 3703(c)(1))

§ 36.4838 Supplementary administrative action.

(a) Notwithstanding any requirement, condition, or limitation stated in or imposed by the regulations concerning the guaranty or insurance of loans to veterans, the Under Secretary for Benefits, or the Director, Loan Guaranty Service, within the limitations and conditions prescribed by the Secretary,

is hereby authorized, if he or she finds the interests of the Government are not adversely affected, to relieve undue prejudice to a debtor, holder, or other person, which might otherwise result, provided no such action may be taken which would impair the vested rights of any person affected thereby. If such requirement, condition, or limitation is of an administrative or procedural (not substantive) nature, any employee designated in § 36.4845 is hereby authorized to grant similar relief if he or she finds the failure or error of the lender was due to misunderstanding or mistake and that the interests of the Government are not adversely affected. Provisions of the regulations considered to be of an administrative or procedural (nonsubstantive) nature are limited to the following:

(1) The requirement in § 36.4808(a) that a lender obtain in prior approval of the Secretary before closing a joint loan if the lender or class of lenders is eligible or has been approved by the Secretary to close loans on the automatic basis pursuant to 38 U.S.C. 3702(d);

(2) The requirements in § 36.4803(l) concerning the giving of notice in assumption cases under 38 U.S.C. 3714;

(3) The requirement in § 36.4824(d)(3) that no claim is payable unless it is submitted within 1 year after the liquidation sale;

(4) The requirement in § 36.4823(a) to submit notice of election to convey a property to VA within 15 days of the date of liquidation sale;

(5) The determination by the holder in § 36.4823(b) of the amount of indebtedness that must be waived in order to make a property eligible for conveyance;

(6) The determination in § 36.4814(f)(2) of the date beyond which no additional fees or charges will be allowed;

(7) The determination in § 36.4824(a)(3) of the interest payable on a claim under guaranty; and

(8) The reconsideration in § 36.4824(e) of the holder's electronic request for review of any denied items within the claim;

(b) Authority is hereby granted to the Loan Guaranty Officer to redelegate authority to make any determinations under this section.

(Authority: 38 U.S.C. 3714 and 3720)

§ 36.4839 Eligibility of loans; reasonable value requirements.

(a) Evidence of guaranty or insurance shall be issued in respect to a loan for any of the purposes specified in 38 U.S.C. 3710(a) only if all of the following conditions are met:

(1) The proceeds of such loan have been used to pay for the property purchased, constructed, repaired, refinanced, altered, or improved.

(2) Except as to refinancing loans pursuant to 38 U.S.C. 3710(a)(8), (a)(9)(B)(i), (a)(11), or (b)(7) and energy efficient mortgages pursuant to 38 U.S.C. 3710(d), the loan (including any scheduled deferred interest added to principal) does not exceed the reasonable value of the property or projected reasonable value of a new home which is security for a graduated payment mortgage loan, as appropriate, as determined by the Secretary. For the purpose of determining the reasonable value of a graduated payment mortgage loan to purchase a new home, the reasonable value of the property as of the time the loan is made shall be calculated to increase at a rate not in excess of 2.5 percent per year, but in no event may the projected value of the property exceed 115 percent of the initially established reasonable value.

(Authority: 38 U.S.C. 3703(d)(2))

(3) The veteran has certified, in such form as the Secretary may prescribe, that the veteran has paid in cash from his or her own resources on account of such purchase, construction, alteration, repair, or improvement a sum equal to the difference, if any, between the purchase price or cost of the property and its reasonable value.

(b) A loan guaranteed under 38 U.S.C. 3710(d) which includes the cost of energy efficient improvements may exceed the reasonable value of the property. The cost of the energy efficient improvements that may be financed may not exceed $3,000; provided, however, that up to $6,000 in energy efficient improvements may be financed if the increase in the monthly payment for principal and interest does not exceed the likely reduction in monthly utility costs resulting from the energy efficient improvements.

(Authority: 38 U.S.C. 3710)

(c) Notwithstanding that the aggregate of the loan amount in the case of loans for the purposes specified in paragraph (a) of this section, and the amount remaining unpaid on taxes, special assessments, prior mortgage indebtedness, or other obligations of any character secured by enforceable superior liens or a right to such lien existing as of the date the loan is closed exceeds the reasonable value of such property as of said date and that evidence of guaranty or insurance credit is issued in respect thereof, as between the holder and Secretary (for the purpose of computing the claim on the guaranty or insurance and for the purposes of § 36.4823, and all accounting), the indebtedness which is the subject of the guaranty or insurance shall be deemed to have been reduced as of the date of the loan by a sum equal to such excess, less any amounts secured by liens released or paid on the obligations secured by such superior liens or rights by a holder or others without expense to or obligation on the debtor resulting from such payment, or release of lien or right; and all payments made on the loan shall be applied to the indebtedness as so reduced. Nothing in this paragraph affects any right or liability resulting from fraud or willful misrepresentation.

(Authority: 38 U.S.C. 3703(c)(1), 3710, 3712)

§ 36.4840 Underwriting standards, processing procedures, lender responsibility, and lender certification.

(a) *Use of standards.* The standards contained in paragraphs (c) through (j) of this section will be used to determine whether the veteran's present and anticipated income and expenses, and credit history are satisfactory. These standards do not apply to loans guaranteed pursuant to 38 U.S.C. 3710(a)(8) except for cases where the Secretary is required to approve the loan in advance under § 36.4807.

(Authority: 38 U.S.C. 3703, 3710)

(b) *Waiver of standards.* Use of the standards in paragraphs (c) through (j) of this section for underwriting home loans will be waived only in extraordinary circumstances when the Secretary determines, considering the totality of circumstances, that the veteran is a satisfactory credit risk.

(c) *Methods.* The two primary underwriting standards that will be used in determining the adequacy of the veteran's present and anticipated income are debt-to-income ratio and residual income analysis. They are described in paragraphs (d) through (f) of this section. Ordinarily, to qualify for a loan, the veteran must meet both standards. Failure to meet one standard, however, will not automatically disqualify a veteran. The following exceptions shall apply to cases where a veteran does not meet both standards:

(1) If the debt-to-income ratio is 41 percent or less, and the veteran does not meet the residual income standard, the loan may be approved with justification, by the underwriter's supervisor, as set out in paragraph (c)(4) of this section.

(2) If the debt-to-income ratio is greater than 41 percent (unless it is larger due solely to the existence of tax-free income which should be noted in the loan file), the loan may be approved

with justification, by the underwriter's supervisor, as set out in paragraph (c)(4) of this section.

(3) If the ratio is greater than 41 percent and the residual income exceeds the guidelines by at least 20 percent, the second level review and statement of justification are not required.

(4) In any case described by paragraphs (c)(1) and (c)(2) of this section, the lender must fully justify the decision to approve the loan or submit the loan to the Secretary for prior approval in writing. The lender's statement must not be perfunctory, but should address the specific compensating factors, as set forth in paragraph (c)(5) of this section, justifying the approval of the loan. The statement must be signed by the underwriter's supervisor. It must be stressed that the statute requires not only consideration of a veteran's present and anticipated income and expenses, but also that the veteran be a satisfactory credit risk. Therefore, meeting both the debt-to-income ratio and residual income standards does not mean that the loan is automatically approved. It is the lender's responsibility to base the loan approval or disapproval on all the factors present for any individual veteran. The veteran's credit must be evaluated based on the criteria set forth in paragraph (g) of this section as well as a variety of compensating factors that should be evaluated.

(5) The following are examples of acceptable compensating factors to be considered in the course of underwriting a loan:

(i) Excellent long-term credit;

(ii) Conservative use of consumer credit;

(iii) Minimal consumer debt;

(iv) Long-term employment;

(v) Significant liquid assets;

(vi) Down payment or the existence of equity in refinancing loans;

(vii) Little or no increase in shelter expense;

(viii) Military benefits;

(ix) Satisfactory homeownership experience;

(x) High residual income;

(xi) Low debt-to-income ratio;

(xii) Tax credits of a continuing nature, such as tax credits for child care; and

(xiii) Tax benefits of home ownership.

(6) The list in paragraph (c)(5) of this section is not exhaustive and the items are not in any priority order. Valid compensating factors should represent unusual strengths rather than mere satisfaction of basic program requirements. Compensating factors must be relevant to the marginality or weakness.

(d) *Debt-to-income ratio.* A debt-to-income ratio that compares the veteran's anticipated monthly housing expense and total monthly obligations to his or her stable monthly income will be computed to assist in the assessment of the potential risk of the loan. The ratio will be determined by taking the sum of the monthly Principal, Interest, Taxes and Insurance (PITI) of the loan being applied for, homeowners and other assessments such as special assessments, condominium fees, homeowners association fees, etc., and any long-term obligations divided by the total of gross salary or earnings and other compensation or income. The ratio should be rounded to the nearest two digits; e.g., 35.6 percent would be rounded to 36 percent. The standard is 41 percent or less. If the ratio is greater than 41 percent, the steps cited in paragraphs (c)(1) through (c)(6) of this section apply.

(e) *Residual income guidelines.* The guidelines provided in this paragraph for residual income will be used to determine whether the veteran's monthly residual income will be adequate to meet living expenses after estimated monthly shelter expenses have been paid and other monthly obligations have been met. All members of the household must be included in determining if the residual income is sufficient. They must be counted even if the veteran's spouse is not joining in title or on the note, or if there are any other individuals depending on the veteran for support, such as children from a spouse's prior marriage who are not the veteran's legal dependents. It is appropriate, however, to reduce the number of members of a household to be counted for residual income purposes if there is sufficient verified income not otherwise included in the loan analysis, such as child support being regularly received as discussed in paragraph (e)(4) of this section. In the case of a spouse not to be obligated on the note, verification that he/she has stable and reliable employment as discussed in paragraph (f)(3) of this section would allow not counting the spouse in determining the sufficiency of the residual income. The guidelines for residual income are based on data supplied in the Consumer Expenditure Survey (CES) published by the Department of Labor's Bureau of Labor Statistics. Regional minimum incomes have been developed for loan amounts up to $79,999 and for loan amounts of $80,000 and above. It is recognized that the purchase price of the property may affect family expenditure levels in individual cases. This factor may be given consideration in the final determination in individual loan analyses. For example, a family purchasing in a higher-priced neighborhood may feel a need to incur higher-than-average expenses to support a lifestyle comparable to that in their environment, whereas a substantially lower-priced home purchase may not compel such expenditures. It should also be clearly understood from this information that no single factor is a final determinant in any applicant's qualification for a VA-guaranteed loan. Once the residual income has been established, other important factors must be examined. One such consideration is the amount being paid currently for rental or housing expenses. If the proposed shelter expense is materially in excess of what is currently being paid, the case may require closer scrutiny. In such cases, consideration should be given to the ability of the borrower and spouse to accumulate liquid assets, such as cash and bonds, and to the amount of debts incurred while paying a lesser amount for shelter. For example, if an application indicates little or no capital reserves and excessive obligations, it may not be reasonable to conclude that a substantial increase in shelter expenses can be absorbed. Another factor of prime importance is the applicant's manner of meeting obligations. A poor credit history alone is a basis for disapproving a loan, as is an obviously inadequate income. When one or the other is marginal, however, the remaining aspect must be closely examined to assure that the loan applied for will not exceed the applicant's ability or capacity to repay. Therefore, it is important to remember that the figures provided below for residual income are to be used as a guide and should be used in conjunction with the steps outlined in paragraphs (c) through (j) of this section. The residual income guidelines are as follows:

(1) *Table of residual incomes by region (for loan amounts of $79,999 and below):*

TABLE OF RESIDUAL INCOMES BY REGION

[For loan amounts of $79,999 and below]

Family size [1]	Northeast	Midwest	South	West
1	390	382	382	425
2	654	641	641	713
3	788	772	772	859
4	888	868	868	967
5	921	902	902	1,004

[1] For families with more than five members, add $75 for each additional member up to a family of seven. ''Family'' includes all members of the household.

(2) *Table of residual incomes by region (for loan amounts of $80,000 and above):*

TABLE OF RESIDUAL INCOMES BY REGION

[For loan amounts of $80,000 and above]

Family size [1]	Northeast	Midwest	South	West
1	450	441	441	491
2	755	738	738	823
3	909	889	889	990
4	1,025	1,003	1,003	1,117
5	1,062	1,039	1,039	1,158

[1] For families with more than five members, add $80 for each additional member up to a family of seven. ''Family'' includes all members of the household.

(3) *Geographic regions for residual income guidelines:* Northeast—Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island and Vermont; Midwest—Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin; South—Alabama, Arkansas, Delaware, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, Puerto Rico, South Carolina, Tennessee, Texas, Virginia, West Virginia; West—Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming.

(4) *Military adjustments.* For loan applications involving an active-duty servicemember or military retiree, the residual income figures will be reduced by a minimum of 5 percent if there is a clear indication that the borrower or spouse will continue to receive the benefits resulting from the use of facilities on a nearby military base. (This reduction applies to tables in paragraph (e) of this section.)

(f) *Stability and reliability of income.* Only stable and reliable income of the veteran and spouse can be considered in determining ability to meet mortgage payments. Income can be considered stable and reliable if it can be concluded that it will continue during the foreseeable future.

(1) *Verification.* Income of the borrower and spouse which is derived from employment and which is considered in determining the family's ability to meet the mortgage payments, payments on debts and other obligations, and other expenses must be verified. If the spouse is employed and will be contractually obligated on the loan, the combined income of both the veteran and spouse is considered when the income of the veteran alone is not sufficient to qualify for the amount of the loan sought. In other than community property states, if the spouse will not be contractually obligated on the loan, Regulation B (12 CFR part 202), promulgated by the Federal Reserve Board pursuant to the Equal Credit Opportunity Act, prohibits any request for, or consideration of, information concerning the spouse (including income, employment, assets, or liabilities), except that if the applicant is relying on alimony, child support, or maintenance payments from a spouse or former spouse as a basis for repayment of the loan, information concerning such spouse or former spouse may be requested and considered (see paragraph (f)(4) of this section). In community property states, information concerning a spouse may be requested and considered in the same manner as that for the applicant. The standards applied to income of the veteran are also applicable to that of the spouse. There can be no discounting of income on account of sex, marital status, or any other basis prohibited by the Equal Credit Opportunity Act. Income claimed by an applicant that is not or cannot be verified cannot be considered when analyzing the loan. If the veteran or spouse has been employed by a present employer for less than 2 years, a 2-year history covering prior employment, schooling, or other training must be secured. Any periods of unemployment must be explained. Employment verifications and pay stubs must be no more than 120 days (180 days for new construction) old to be considered valid. For loans closed automatically, this requirement will be considered satisfied if the date of the employment verification is within 120 days (180 days for new construction) of the date the note is signed. For prior approval loans, this requirement will be considered satisfied if the verification of employment is dated within 120 days of the date the application is received by VA.

(2) *Active-duty, Reserve, or National Guard applicants.* (i) In the case of an active-duty applicant, a military Leave & Earnings Statement is required and will be used instead of an employment verification. The statement must be no more than 120 days old (180 days for new construction) and must be the

original or a lender-certified copy of the original. For loans closed automatically, this requirement is satisfied if the date of the Leave & Earnings Statement is within 120 days (180 days for new construction) of the date the note is signed. For prior approval loans, this requirement will be considered satisfied if the verification of employment is dated within 120 days of the date the application is received by VA.

(ii) For servicemembers within 12 months of release from active duty, or members of the Reserves or National Guard within 12 months of release, one of the following is also required:

(A) Documentation that the servicemember has in fact already reenlisted or extended his/her period of active duty or Reserve or National Guard service to a date beyond the 12-month period following the projected closing of the loan.

(B) Verification of a valid offer of local civilian employment following release from active duty. All data pertinent to sound underwriting procedures (date employment will begin, earnings, etc.) must be included.

(C) A statement from the servicemember that he/she intends to reenlist or extend his/her period of active duty or Reserve or National Guard service to a date beyond the 12 month period following the projected loan closing date, and a statement from the servicemember's commanding officer confirming that the servicemember is eligible to reenlist or extend his/her active duty or Reserve or National Guard service as indicated and that the commanding officer has no reason to believe that such reenlistment or extension will not be granted.

(D) Other unusually strong positive underwriting factors, such as a down payment of at least 10 percent, significant cash reserves, or clear evidence of strong ties to the community coupled with a nonmilitary spouse's income so high that only minimal income from the active duty servicemember or member of the Reserves or National Guard is needed to qualify.

(iii) Each active-duty member who applies for a loan must be counseled through the use of VA Form 26–0592, Counseling Checklist for Military Homebuyers. Lenders must submit a signed and dated VA Form 26–0592 with each prior approval loan application or automatic loan report involving a borrower on active duty.

(3) *Income reliability*. Income received by the borrower and spouse is to be used only if it can be concluded that the income will continue during the foreseeable future and, thus, should be properly considered in determining ability to meet the mortgage payments. If an employer puts N/A or otherwise declines to complete a verification of employment statement regarding the probability of continued employment, no further action is required of the lender. Reliability will be determined based on the duration of the borrower's current employment together with his or her overall documented employment history. There can be no discounting of income solely because it is derived from an annuity, pension or other retirement benefit, or from part-time employment. However, unless income from overtime work and part-time or second jobs can be accorded a reasonable likelihood that it is continuous and will continue in the foreseeable future, such income should not be used. Generally, the reliability of such income cannot be demonstrated unless the income has continued for 2 years. The hours of duty and other work conditions of the applicant's primary job, and the period of time in which the applicant was employed under such arrangement, must be such as to permit a clear conclusion as to a good probability that overtime or part-time or secondary employment can and will continue. Income from overtime work and part-time jobs not eligible for inclusion as primary income may, if properly verified for at least 12 months, be used to offset the payments due on debts and obligations of an intermediate term, i.e., 6 to 24 months. Such income must be described in the loan file. The amount of any pension or compensation and other income, such as dividends from stocks, interest from bonds, savings accounts, or other deposits, rents, royalties, etc., will be used as primary income if it is reasonable to conclude that such income will continue in the foreseeable future. Otherwise, it may be used only to offset intermediate-term debts, as described in this paragraph. Also, the likely duration of certain military allowances cannot be determined and, therefore, will be used only to offset intermediate-term debts, as described in this paragraph. Such allowances are: Pro-pay, flight or hazard pay, and overseas or combat pay, all of which are subject to periodic review and/or testing of the recipient to ascertain whether eligibility for such pay will continue. Only if it can be shown that such pay has continued for a prolonged period and can be expected to continue because of the nature of the recipient's assigned duties, will such income be considered as primary income. For instance, flight pay verified for a pilot can be regarded as probably continuous and, thus, should be added to the base pay. Income derived from service in the Reserves or National Guard may be used if the applicant has served in such capacity for a period of time sufficient to evidence good probability that such income will continue beyond 12 months. The total period of active and reserve service may be helpful in this regard. Otherwise, such income may be used to offset intermediate-term debts. There are a number of additional income sources whose contingent nature precludes their being considered as available for repayment of a long-term mortgage obligation. Temporary income items such as VA educational allowances and unemployment compensation do not represent stable and reliable income and will not be taken into consideration in determining the ability of the veteran to meet the income requirement of the governing law. As required by the Equal Opportunity Act Amendments of 1976, Public Law 94–239, income from public assistance programs is used to qualify for a loan if it can be determined that the income will probably continue for 3 years or more.

(4) *Tax-exempt income*. Special consideration can be given to verified nontaxable income once it has been established that such income is likely to continue (and remain untaxed) into the foreseeable future. Such income includes certain military allowances, child support payments, workers' compensation benefits, disability retirement payments and certain types of public assistance payments. In such cases, current income tax tables may be used to determine an amount which can be prudently employed to adjust the borrower's actual income. This adjusted or ''grossed up'' income may be used to calculate the monthly debt-to-income ratio, provided the analysis is documented. Only the borrower's actual income may be used to calculate the residual income. Care should be exercised to ensure that the income is in fact tax-exempt.

(5) *Alimony, child support, maintenance, workers' compensation, foster care payments*. (i) If an applicant chooses to reveal income from alimony, child support or maintenance payments (after first having been informed that any such disclosure is voluntary pursuant to the Federal Reserve Board's Regulation B (12 CFR part 202)), such payments are considered as income to the extent that the payments are likely to be consistently made. Factors to be considered in determining the likelihood of consistent payments include, but are not limited to: Whether the payments are received pursuant to a written agreement or court decree; the

length of time the payments have been received; the regularity of receipt; the availability of procedures to compel payment; and the creditworthiness of the payor, including the credit history of the payor when available under the Fair Credit Reporting Act or other applicable laws. However, the Fair Credit Reporting Act (15 U.S.C. 1681(b)) limits the permissible purposes for which credit reports may be ordered, in the absence of written instructions of the consumer to whom the report relates, to business transactions involving the subject of the credit report or extensions of credit to the subject of the credit report.

(ii) If the applicant chooses to reveal income related to workers' compensation, it will be considered as income to the extent it can be determined such income will continue.

(iii) Income received specifically for the care of any foster child(ren) may be counted as income if documented. Generally, however, such foster care income is to be used only to balance the expenses of caring for the foster child(ren) against any increased residual income requirements.

(6) *Military quarters allowance*. With respect to off-base housing (quarters) allowances for service personnel on active duty, it is the policy of the Department of Defense to utilize available on-base housing when possible. In order for a quarters allowance to be considered as continuing income, it is necessary that the applicant furnish written authorization from his or her commanding officer for off-base housing. This authorization should verify that quarters will not be made available and that the individual should make permanent arrangements for nonmilitary housing. A Department of Defense form, DD Form 1747, Status of Housing Availability, is used by the Family Housing Office to advise personnel regarding family housing. The applicant's quarters allowance cannot be considered unless item b (Permanent) or d is completed on DD Form 1747, dated October 1990. Of course, if the applicant's income less quarters allowance is sufficient, there is no need for assurance that the applicant has permission to occupy nonmilitary housing provided that a determination can be made that the occupancy requirements of the law will be met. Also, authorization to obtain off-base housing will not be required when certain duty assignments would clearly qualify service personnel with families for quarters allowance. For instance, off-base housing authorizations need not be obtained for service personnel stationed overseas who are not accompanied by their families, recruiters on detached duty, or military personnel stationed in areas where no on-base housing exists. In any case in which no off-base housing authorization is obtained, an explanation of the circumstances justifying its omission must be included with the loan application except when it has been established by the VA facility of jurisdiction that the waiting lists for on-base housing are so long that it is improbable that individuals desiring to purchase off-base housing would be precluded from doing so in the foreseeable future. If stations make such a determination, a release shall be issued to inform lenders.

(7) *Automobile (or similar) allowance*. Generally, automobile allowances are paid to cover specific expenses related to an applicant's employment, and it is appropriate to use such income to offset a corresponding car payment. However, in some instances, such an allowance may exceed the car payment. With proper documentation, income from a car allowance which exceeds the car payment can be counted as effective income. Likewise, any other similar type of allowance which exceeds the specific expense involved may be added to gross income to the extent it is documented to exceed the actual expense.

(8) *Commissions*. When all or a major portion of the veteran's income is derived from commissions, it will be necessary to establish the stability of such income if it is to be considered in the loan analysis for the repayment of the mortgage debt and/or short-term obligations. In order to assess the value of such income, lenders should obtain written verification of the actual amount of commissions paid to date, the basis for the payment of such commissions and when commissions are paid; i.e., monthly, quarterly, semiannually, or annually. Lenders should also obtain signed and dated individual income tax returns, plus applicable schedules, for the previous 2 years, or for whatever additional period is deemed necessary to properly demonstrate a satisfactory earnings record. The length of the veteran's employment in the type of occupation for which commissions are paid is also an important factor in the assessment of the stability of the income. If the veteran has been employed for a relatively short time, the income should not normally be considered stable unless the product or service was the same or closely related to the product or service sold in an immediate prior position. Generally, income from commissions is considered stable when the applicant has been receiving such income for at least 2 years. Less than 2 years of income from commissions cannot usually be considered stable. When an applicant has received income from commissions for less than 1 year, it will rarely be possible to demonstrate that the income is stable for qualifying purposes; such cases would require in-depth development.

(9) *Self-employment*. Generally, income from self-employment is considered stable when the applicant has been in business for at least 2 years. Less than 2 years of income from self-employment cannot usually be considered stable unless the applicant has had previous related employment and/or extensive specialized training. When an applicant has been self-employed less than 1 year, it will rarely be possible to demonstrate that the income is stable for qualifying purposes; such cases would require in-depth development. The following documentation is required for all self-employed borrowers:

(i) A profit-and-loss statement for the prior fiscal year (12-month accounting cycle), plus the period year to date since the end of the last fiscal year (or for whatever shorter period records may be available), and balance sheet based on the financial records. The financial statement must be sufficient for a loan underwriter to determine the necessary information for loan approval and an independent audit (on the veteran and/or the business) by a Certified Public Accountant will be required if necessary for such determination; and

(ii) Copies of signed individual income tax returns, plus all applicable schedules for the previous 2 years, or for whatever additional period is deemed necessary to properly demonstrate a satisfactory earnings record, must be obtained. If the business is a corporation or partnership, copies of signed Federal business income tax returns for the previous two years plus all applicable schedules for the corporation or partnership must be obtained; and

(iii) If the business is a corporation or partnership, a list of all stockholders or partners showing the interest each holds in the business will be required. Some cases may justify a written credit report on the business as well as the applicant. When the business is of an unusual type and it is difficult to determine the probability of its continued operation, explanation as to the function and purpose of the business may be needed from the applicant and/or any other qualified party with the acknowledged expertise to express a valid opinion.

(10) *Recently discharged veterans*. Loan applications received from

recently discharged veterans who have little or no employment experience other than their military occupation and from veterans seeking VA-guaranteed loans who have retired after 20 years of active military duty require special attention. The retirement income of the latter veterans in many cases may not be sufficient to meet the statutory income requirements for the loan amount sought. Many have obtained full-time employment and have been employed in their new jobs for a very short time.

(i) It is essential in determining whether veterans in these categories qualify from the income standpoint for the amount of the loan sought, that the facts in respect to their present employment and retirement income be fully developed, and that each case be considered on its individual merits.

(ii) In most cases the veteran's current income or current income plus his or her retirement income is sufficient. The problem lies in determining whether it can be properly concluded that such income level will continue for the foreseeable future. If the veteran's employment status is that of a trainee or an apprentice, this will, of course, be a factor. In cases of the self-employed, the question to be resolved is whether there are reasonable prospects that the business enterprise will be successful and produce the required income. Unless a favorable conclusion can be made, the income from such source should not be considered in the loan analysis.

(iii) If a recently discharged veteran has no prior employment history and the veteran's verification of employment shows he or she has not been on the job a sufficient time in which to become established, consideration should be given to the duties the veteran performed in the military service. When it can be determined that the duties a veteran performed in the service are similar or are in direct relation to the duties of the applicant's present position, such duties may be construed as adding weight to his or her present employment experience and the income from the veteran's present employment thus may be considered available for qualifying the loan, notwithstanding the fact that the applicant has been on the present job only a short time. This same principle may be applied to veterans recently retired from the service. In addition, when the veteran's income from retirement, in relation to the total of the estimated shelter expense, long-term debts and amount available for family support, is such that only minimal income from employment is necessary to qualify from the income standpoint, it would be proper to resolve the doubt in favor of the veteran. It would be erroneous, however, to give consideration to a veteran's income from employment for a short duration in a job requiring skills for which the applicant has had no training or experience.

(iv) To illustrate the provisions of paragraph (f)(10), it would be proper to use short-term employment income in qualifying a veteran who had experience as an airplane mechanic in the military service and the individual's employment after discharge or retirement from the service is in the same or allied fields; e.g., auto mechanic or machinist. This presumes, however, that the verification of employment included a statement that the veteran was performing the duties of the job satisfactorily, the possibility of continued employment was favorable and that the loan application is eligible in all other respects. An example of nonqualifying experience is that of a veteran who was an Air Force pilot and has been employed in insurance sales on commission for a short time. Most cases, of course, fall somewhere between those extremes. It is for this reason that the facts of each case must be fully developed prior to closing the loan automatically or submitting the case to VA for prior approval.

(11) *Employment of short duration*. The provisions of paragraph (f)(7) of this section are similarly applicable to applicants whose employment is of short duration. Such cases will entail careful consideration of the employer's confirmation of employment, probability of permanency, past employment record, the applicant's qualifications for the position, and previous training, including that received in the military service. In the event that such considerations do not enable a determination that the income from the veteran's current position has a reasonable likelihood of continuance, such income should not be considered in the analysis. Applications received from persons employed in the building trades, or in other occupations affected by climatic conditions, should be supported by documentation evidencing the applicant's total earnings to date and covering a period of not less than 1 year as well as signed and dated copies of complete income tax returns, including all schedules for the past 2 years or for whatever additional period is deemed necessary to properly demonstrate a satisfactory earnings record. If the applicant works out of a union, evidence of the previous year's earnings should be obtained together with a verification of employment from the current employer.

(12) *Rental income*—(i) *Multi-unit subject property*. When the loan pertains to a structure with more than a one-family dwelling unit, the prospective rental income will not be considered unless the veteran can demonstrate a reasonable likelihood of success as a landlord, and sufficient cash reserves are verified to enable the veteran to carry the mortgage loan payments (principal, interest, taxes, and insurance) without assistance from the rental income for a period of at least 6 months. The determination of the veteran's likelihood of success as a landlord will be based on documentation of any prior experience in managing rental units or other collection activities. The amount of rental income to be used in the loan analysis will be based on 75 percent of the amount indicated on the lease or rental agreement, unless a greater percentage can be documented.

(ii) *Rental of existing home*. Proposed rental of a veteran's existing property may be used to offset the mortgage payment on that property, provided there is no indication that the property will be difficult to rent. If available, a copy of the rental agreement should be obtained. It is the responsibility of the loan underwriter to be aware of the condition of the local rental market. For instance, in areas where the rental market is very strong the absence of a lease should not automatically prohibit the offset of the mortgage by the proposed rental income.

(iii) *Other rental property*. If income from rental property will be used to qualify for the new loan, the documentation required of a self-employed applicant should be obtained together with evidence of cash reserves equaling 3 months PITI on the rental property. As for any self-employed earnings (see paragraph (f)(7) of this section), depreciation claimed may be added back in as income. In the case of a veteran who has no experience as a landlord, it is unlikely that the income from a rental property may be used to qualify for the new loan.

(13) *Taxes and other deductions*. Deductions to be applied for Federal income taxes and Social Security may be obtained from the Employer's Tax Guide (Circular E) issued by the Internal Revenue Service (IRS). (For veterans receiving a mortgage credit certificate (MCC), see paragraph (f)(14) of this section.) Any State or local taxes should be estimated or obtained from charts similar to those provided by IRS which may be available in those states with withholding taxes. A determination of the amount paid or withheld for retirement purposes should be made

and used when calculating deductions from gross income. In determining whether a veteran-applicant meets the income criteria for a loan, some consideration may be given to the potential tax benefits the veteran will realize if the loan is approved. This can be done by using the instructions and worksheet portion of IRS Form W–4, Employee's Withholding Allowance Certificate, to compute the total number of permissible withholding allowances. That number can then be used when referring to IRS Circular E and any appropriate similar State withholding charts to arrive at the amount of Federal and State income tax to be deducted from gross income.

(14) *Mortgage credit certificates.* (i) The Internal Revenue Code (26 U.S.C.) as amended by the Tax Reform Act of 1984, allows states and other political subdivisions to trade in all or part of their authority to issue mortgage revenue bonds for authority to issue MCCs. Veterans who are recipients of MCCs may realize a significant reduction in their income tax liability by receiving a Federal tax credit for a percentage of their mortgage interest payment on debt incurred on or after January 1, 1985.

(ii) Lenders must provide a copy of the MCC to VA with the home loan application. The MCC will specify the rate of credit allowed and the amount of certified indebtedness; i.e., the indebtedness incurred by the veteran to acquire a principal residence or as a qualified home improvement or rehabilitation loan.

(iii) For credit underwriting purposes, the amount of tax credit allowed to a veteran under an MCC will be treated as a reduction in the monthly Federal income tax. For example, a veteran having a $600 monthly interest payment and an MCC providing a 30-percent tax credit would receive a $180 (30 percent × $600) tax credit each month. However, because the annual tax credit, which amounts to $2,160 (12 × $180), exceeds $2,000 and is based on a 30-percent credit rate, the maximum tax credit the veteran can receive is limited to $2,000 per year (Pub. L. 98–369) or $167 per month ($2,000/12). As a consequence of the tax credit, the interest on which a deduction can be taken will be reduced by the amount of the tax credit to $433 ($600 − $167). This reduction should also be reflected when calculating Federal income tax.

(iv) For underwriting purposes, the amount of the tax credit is limited to the amount of the veteran's maximum tax liability. If, in the example in paragraph (f)(14)(iii) of this section, the veteran's tax liability for the year were only $1,500, the monthly tax credit would be limited to $125 ($1,500/12).

(g) *Credit.* The conclusion reached as to whether or not the veteran and spouse are satisfactory credit risks must also be based on a careful analysis of the available credit data. Regulation B (12 CFR part 202), promulgated by the Federal Reserve Board pursuant to the Equal Credit Opportunity Act, requires that lenders, in evaluating creditworthiness, shall consider, on the applicant's request, the credit history, when available, of any account reported in the name of the applicant's spouse or former spouse which the applicant can demonstrate accurately reflects the applicant's creditworthiness. In other than community property states, if the spouse will not be contractually obligated on the loan, Regulation B prohibits any request for or consideration of information about the spouse concerning income, employment, assets or liabilities. In community property states, information concerning a spouse may be requested and considered in the same manner as that for the applicant.

(1) *Adverse data.* If the analysis develops any derogatory credit information and, despite such facts, it is determined that the veteran and spouse are satisfactory credit risks, the basis for the decision must be explained. If a veteran and spouse have debts outstanding which have not been paid timely, or which they have refused to pay, the fact that the outstanding debts are paid after the acceptability of the credit is questioned or in anticipation of applying for new credit does not, of course, alter the fact that the record for paying debts has been unsatisfactory. With respect to unpaid debts, lenders may take into consideration a veteran's claim of bona fide or legal defenses. Such defenses are not applicable when the debt has been reduced to judgment. Where a collection account has been established, if it is determined that the borrower is a satisfactory credit risk, it is not mandatory that such an account be paid off in order for a loan to be approved. Court-ordered judgments, however, must be paid off before a new loan is approved.

(2) *Bankruptcy.* When the credit information shows that the borrower or spouse has been discharged in bankruptcy under the ''straight'' liquidation and discharge provisions of the bankruptcy law, this would not in itself disqualify the loan. However, in such cases it is necessary to develop complete information as to the facts and circumstances concerning the bankruptcy. Generally speaking, when the borrower or spouse, as the case may be, has been regularly employed (not self-employed) and has been discharged in bankruptcy within the last one to two years, it probably would not be possible to determine that the borrower or spouse is a satisfactory credit risk unless both of the following requirements are satisfied:

(i) The borrower or spouse has obtained credit subsequent to the bankruptcy and has met the credit payments in a satisfactory manner over a continued period; and

(ii) The bankruptcy was caused by circumstances beyond the control of the borrower or spouse, e.g., unemployment, prolonged strikes, medical bills not covered by insurance. Divorce is not generally viewed as beyond the control of the borrower and/or spouse. The circumstances alleged must be verified. If a borrower or spouse is self-employed, has been adjudicated bankrupt, and subsequently obtains a permanent position, a finding as to satisfactory credit risk may be made provided there is no derogatory credit information prior to self-employment, there is no derogatory credit information subsequent to the bankruptcy, and the failure of the business was not due to misconduct. If a borrower or spouse has been discharged in bankruptcy within the past 12 months, it will not generally be possible to determine that the borrower or spouse is a satisfactory credit risk.

(3) *Petition under Chapter 13 of Bankruptcy Code.* A petition under chapter 13 of the Bankruptcy Code (11 U.S.C.) filed by the borrower or spouse is indicative of an effort to pay their creditors. Some plans may provide for full payment of debts while others arrange for payment of scaled-down debts. Regular payments are made to a court-appointed trustee over a 2- to 3-year period (or up to 5 years in some cases). When the borrowers have made all payments in a satisfactory manner, they may be considered as having reestablished satisfactory credit. When they apply for a home loan before completion of the payout period, favorable consideration may nevertheless be given if at least 12 months' worth of payments have been made satisfactorily and the Trustee or Bankruptcy Judge approves of the new credit.

(4) *Foreclosures.* (i) When the credit information shows that the veteran or spouse has had a foreclosure on a prior mortgage; e.g., a VA-guaranteed or HUD-insured mortgage, this will not in itself disqualify the borrower from obtaining the loan. Lenders and field station personnel should refer to the preceding guidelines on bankruptcies for cases

involving foreclosures. As with a borrower who has been adjudicated bankrupt, it is necessary to develop complete information as to the facts and circumstances of the foreclosure.

(ii) When VA pays a claim on a VA-guaranteed loan as a result of a foreclosure, the original veteran may be required to repay any loss to the Government. In some instances VA may waive the veteran's debt, in part or totally, based on the facts and circumstances of the case. However, guaranty entitlement cannot be restored unless the Government's loss has been repaid in full, regardless of whether or not the debt has been waived, compromised, or discharged in bankruptcy. Therefore, a veteran who is seeking a new VA loan after having experienced a foreclosure on a prior VA loan will in most cases have only remaining entitlement to apply to the new loan. The lender should assure that the veteran has sufficient entitlement for its secondary marketing purposes.

(5) *Federal debts.* An applicant for a Federally-assisted loan will not be considered a satisfactory credit risk for such loan if the applicant is presently delinquent or in default on any debt to the Federal Government, e.g., a Small Business Administration loan, a U.S. Guaranteed Student loan, a debt to the Public Health Service, or where there is a judgment lien against the applicant's property for a debt owed to the Government. The applicant may not be approved for the loan until the delinquent account has been brought current or satisfactory arrangements have been made between the borrower and the Federal agency owed, or the judgment is paid or otherwise satisfied. Of course, the applicant must also be able to otherwise qualify for the loan from an income and remaining credit standpoint. Refinancing under VA's interest rate reduction refinancing provisions, however, is allowed even if the borrower is delinquent on the VA guaranteed mortgage being refinanced. Prior approval processing is required in such cases.

(6) *Absence of credit history.* The fact that recently discharged veterans may have had no opportunity to develop a credit history will not preclude a determination of satisfactory credit. Similarly, other loan applicants may not have established credit histories as a result of a preference for purchasing consumer items with cash rather than credit. There are also cases in which individuals may be genuinely wary of acquiring new obligations following bankruptcy, consumer credit counseling (debt proration), or other disruptive credit occurrence. The absence of the credit history in these cases will not generally be viewed as an adverse factor in credit underwriting. However, before a favorable decision is made for cases involving bankruptcies or other derogatory credit factors, efforts should be made to develop evidence of timely payment of non-installment debts such as rent and utilities. It is anticipated that this special consideration in the absence of a credit history following bankruptcy would be the rare case and generally confined to bankruptcies that occurred over 3 years ago.

(7) *Consumer credit counseling plan.* If a veteran, or veteran and spouse, have prior adverse credit and are participating in a Consumer Credit Counseling plan, they may be determined to be a satisfactory credit risk if they demonstrate 12 months' satisfactory payments and the counseling agency approves the new credit. If a veteran, or veteran and spouse, have good prior credit and are participating in a Consumer Credit Counseling plan, such participation is to be considered a neutral factor, or even a positive factor, in determining creditworthiness.

(8) *Re-establishment of satisfactory credit.* In circumstances not involving bankruptcy, satisfactory credit is generally considered to be reestablished after the veteran, or veteran and spouse, have made satisfactory payments for 12 months after the date of the last derogatory credit item.

(9) *Long-term* v. *short-term debts.* All known debts and obligations including any alimony and/or child support payments of the borrower and spouse must be documented. Significant liabilities, to be deducted from the total income in determining ability to meet the mortgage payments are accounts that, generally, are of a relatively long term, i.e., 10 months or over. Other accounts for terms of less than 10 months must, of course, be considered in determining ability to meet family expenses. Certainly, any severe impact on the family's resources for any period of time must be considered in the loan analysis. For example, monthly payments of $300 on an auto loan with a remaining balance of $1,500 would be included in those obligations to be deducted from the total income regardless of the fact that the account can be expected to pay out in 5 months. It is clear that the applicant will, in this case, continue to carry the burden of those $300 payments for the first, most critical months of the home loan.

(10) *Requirements for verification.* If the credit investigation reveals debts or obligations of a material nature which were not divulged by the applicant, lenders must be certain to obtain clarification as to the status of such debts from the borrower. A proper analysis is obviously not possible unless there is total correlation between the obligations claimed by the borrower and those revealed by a credit report or deposit verification. Conversely, significant debts and obligations reported by the borrower must be dated. If the credit report fails to provide necessary information on such accounts, lenders will be expected to obtain their own verifications of those debts directly from the creditors. Credit reports and verifications must be no more than 120 days old (180 days for new construction) to be considered valid. For loans closed automatically, this requirement will be considered satisfied if the date of the credit report or verification is within 120 days (180 days for new construction) of the date the note is signed. For prior approval loans, this requirement will be considered satisfied if the date of the credit report or verification is within 120 days of the date the application is received by VA. Of major significance are the applicant's rental history and outstanding or recently retired mortgages, if any, particularly prior VA loans. Lenders should be sure ratings on such accounts are obtained; a written explanation is required when ratings are not available. A determination is necessary as to whether alimony and/or child support payments are required. Verification of the amount of such obligations should be obtained, although documentation concerning an applicant's divorce should not be obtained automatically unless it is necessary to verify the amount of any alimony or child support liability indicated by the applicant. If in the routine course of processing the loan application, however, direct evidence is received (e.g., from the credit report) that an obligation to pay alimony or child support exists (as opposed to mere evidence that the veteran was previously divorced), the discrepancy between the loan application and credit report can and should be fully resolved in the same manner as any other such discrepancy would be handled. When a pay stub or leave-and-earnings statement indicates an allotment, the lender must investigate the nature of the allotment(s) to determine whether the allotment is related to a debt. Debts assigned to an ex-spouse by a divorce decree will not generally be charged against a veteran-borrower.

(11) *Job-related expenses.* Known job-related expenses should be documented. This will include costs for any dependent care, significant commuting

costs, etc. When a family's circumstances are such that dependent care arrangements would probably be necessary, it is important to determine the cost of such services in order to arrive at an accurate total of deductions.

(12) *Credit reports.* Credit reports obtained by lenders on VA-guaranteed loan applications must be either a three-file Merged Credit Report (MCR) or a Residential Mortgage Credit Report (RMCR). If used, the RMCR must meet the standards formulated jointly by the Department of Veterans Affairs, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Administration, Farmers Home Administration, credit repositories, repository affiliated consumer reporting agencies and independent consumer reporting agencies. All credit reports obtained by the lender must be submitted to VA.

(h) *Borrower's personal and financial status.* The number and ages of dependents have an important bearing on whether income after deduction of fixed charges is sufficient to support the family. Type and duration of employment of both the borrower and spouse are important as an indication of stability of their employment. The amount of liquid assets owned by the borrower or spouse, or both, is an important factor in determining that they have sufficient funds to close the loan, as well as being significant in analyzing the overall qualifications for the loan. (It is imperative that adequate cash assets from the veteran's own resources are verified to allow the payment (see § 36.4839(a)(3)) of any difference between the sales price of the property and the loan amount, in addition to that necessary to cover closing costs, if the sales price exceeds the reasonable value established by VA.) Verifications must be no more than 120 days old (180 days for new construction) to be considered valid. For loans closed on the automatic basis, this requirement will be considered satisfied if the date of the deposit verification is within 120 days (180 days for new construction) of the date of the veteran's application to the lender. For prior approval loans, this requirement will be considered satisfied if the verification of employment is dated within 120 days of the date the application is received by VA. Current monthly rental or other housing expense is an important consideration when compared to that to be undertaken in connection with the contemplated housing purchase.

(i) *Estimated monthly shelter expenses.* It is important that monthly expenses such as taxes, insurance, assessments and maintenance and utilities be estimated accurately based on property location and type of house; e.g., old or new, large or small, rather than using or applying a ''rule of thumb'' to all properties alike. Maintenance and utility amounts for various types of property should be realistically estimated. Local utility companies should be consulted for current rates. The age and type of construction of a house may well affect these expenses. In the case of condominiums or houses in a planned unit development (PUD), the monthly amount of the maintenance assessment payable to a homeowners association should be added. If the amount currently assessed is less than the maximum provided in the covenants or master deed, and it appears likely that the amount will be insufficient for operation of the condominium or PUD, the amount used will be the maximum the veteran could be charged. If it is expected that real estate taxes will be raised, or if any special assessments are expected, the increased or additional amounts should be used. In special flood hazard areas, include the premium for any required flood insurance.

(j) *Lender responsibility.* (1) Lenders are fully responsible for developing all credit information; i.e., for obtaining verifications of employment and deposit, credit reports, and for the accuracy of the information contained in the loan application.

(2) Verifications of employment and deposits, and requests for credit reports and/or credit information must be initiated and received by the lender.

(3) In cases where the real estate broker/agent or any other party requests any of this information, the report(s) must be returned directly to the lender. This fact must be disclosed by appropriately completing the required certification on the loan application or report and the parties must be identified as agents of the lender.

(4) Where the lender relies on other parties to secure any of the credit or employment information or otherwise accepts such information obtained by any other party, such parties shall be construed for purposes of the submission of the loan documents to VA to be authorized agents of the lender, regardless of the actual relationship between such parties and the lender, even if disclosure is not provided to VA under paragraph (j)(3) of this section. Any negligent or willful misrepresentation by such parties shall be imputed to the lender as if the lender had processed those documents and the lender shall remain responsible for the quality and accuracy of the information provided to VA.

(5) All credit reports secured by the lender or other parties as identified in paragraphs (j)(3) and (4) of this section shall be provided to VA. If updated credit reports reflect materially different information than that in other reports, such discrepancies must be explained by the lender and the ultimate decision as to the effects of the discrepancy upon the loan application fully addressed by the underwriter.

(k) *Lender certification.* Lenders originating loans are responsible for determining and certifying to VA on the appropriate application or closing form that the loan meets all statutory and regulatory requirements. Lenders will affirmatively certify that loans were made in full compliance with the law and loan guaranty regulations as prescribed in this section.

(1) *Definitions.* The definitions contained in part 42 of this chapter and the following definitions are applicable in this section.

(i) *Another appropriate amount.* In determining the appropriate amount of a lender's civil penalty in cases where the Secretary has not sustained a loss or where two times the amount of the Secretary's loss on the loan involved does not exceed $10,000, the Secretary shall consider:

(A) The materiality and importance of the false certification to the determination to issue the guaranty or to approve the assumption;

(B) The frequency and past pattern of such false certifications by the lender; and

(C) Any exculpatory or mitigating circumstances.

(ii) *Complaint.* Complaint includes the assessment of liability served pursuant to this section.

(iii) *Defendant.* Defendant means a lender named in the complaint.

(iv) *Lender.* Lender includes the holder approving loan assumptions pursuant to 38 U.S.C. 3714.

(2) *Procedures for certification.* (i) As a condition to VA issuance of a loan guaranty on all loans closed on or after October 27, 1994, and as a prerequisite to an effective loan assumption on all loans assumed pursuant to 38 U.S.C. 3714 on or after November 17, 1997, the following certification shall accompany each loan closing or assumption package:

The undersigned lender certifies that the (loan) (assumption) application, all verifications of employment, deposit, and other income and credit verification documents have been processed in compliance with 38 CFR part 36; that all credit reports obtained or generated in connection with the processing of this borrower's (loan) (assumption) application

have been provided to VA; that, to the best of the undersigned lender's knowledge and belief the (loan) (assumption) meets the underwriting standards recited in chapter 37 of title 38 United States Code and 38 CFR part 36; and that all information provided in support of this (loan) (assumption) is true, complete and accurate to the best of the undersigned lender's knowledge and belief.

(ii) The certification shall be executed by an officer of the lender authorized to execute documents and act on behalf of the lender.

(3) *Penalty.* Any lender who knowingly and willfully makes a false certification required pursuant to § 36.4840(k)(2) shall be liable to the United States Government for a civil penalty equal to two times the amount of the Secretary's loss on the loan involved or to another appropriate amount, not to exceed $10,000, whichever is greater.

(l) *Assessment of liability.* (1) Upon an assessment confirmed by the Under Secretary for Benefits, in consultation with the Investigating Official, that a certification, as required in this section, is false, a report of findings of the Under Secretary for Benefits shall be submitted to the Reviewing Official setting forth:

(i) The evidence that supports the allegations of a false certification and of liability;

(ii) A description of the claims or statements upon which the allegations of liability are based;

(iii) The amount of the VA demand to be made; and

(iv) Any exculpatory or mitigating circumstances that may relate to the certification.

(2) The Reviewing Official shall review all of the information provided and will either inform the Under Secretary for Benefits and the Investigating Official that there is not adequate evidence, that the lender is liable, or serve a complaint on the lender stating:

(i) The allegations of a false certification and of liability;

(ii) The amount being assessed by the Secretary and the basis for the amount assessed;

(iii) Instructions on how to satisfy the assessment and how to file an answer to request a hearing, including a specific statement of the lender's right to request a hearing by filing an answer and to be represented by counsel; and

(iv) That failure to file an answer within 30 days of the complaint will result in the imposition of the assessment without right to appeal the assessment to the Secretary.

(m) *Hearing procedures.* A lender hearing on an assessment established pursuant to this section shall be governed by the procedures recited at 38 CFR 42.8 through 42.47.

(n) *Additional remedies.* Any assessment under this section may be in addition to other remedies available to VA, such as debarment and suspension pursuant to 38 U.S.C. 3704 and 2 CFR parts 180 and 801 or loss of automatic processing authority pursuant to 38 U.S.C. 3702, or other actions by the Government under any other law including but not limited to title 18 U.S.C. and 31 U.S.C. 3732.

(Authority 38 U.S.C. 3703(c)(1), 3710(g))

(The Office of Management and Budget has approved the information collection requirements of this section under control number 2900–0521.)

§ 36.4841 Death or insolvency of holder.

(a) Immediately upon the death of the holder and without the necessity of request or other action by the debtor or the Secretary, all sums then standing as a credit balance in a trust, or deposit, or other account to cover taxes, insurance accruals, or other items in connection with the loan secured by the encumbered property, whether stated to be such or otherwise designated, and which have not been credited on the note shall, nevertheless, be treated as a setoff and shall be deemed to have been credited thereon as of the date of the last debit to such account, so that the unpaid balance of the note as of that date will be reduced by the amount of such credit balance: Provided, that any unpaid taxes, insurance premiums, ground rents, or advances may be paid by the holder of the indebtedness, at the holder's option, and the amount which otherwise would have been deemed to have been credited on the note reduced accordingly. This paragraph shall be applicable whether the estate of the deceased holder is solvent or insolvent.

(b) The provisions of paragraph (a) of this section shall also be applicable in the event of:

(1) Insolvency of holder;

(2) Initiation of any bankruptcy or reorganization, or liquidation proceedings as to the holder, whether voluntary or involuntary;

(3) Appointment of a general or ancillary receiver for the holder's property; or in any case; or

(4) Upon the written request of the debtor if all secured and due insurance premiums, taxes, and ground rents have been paid, and appropriate provisions made for future accruals.

(c) Upon the occurrence of any of the events enumerated in paragraph (a) or (b) of this section, interest on the note and on the credit balance of the deposits mentioned in paragraph (a) shall be set off against each other at the rate payable on the principal of the note, as of the date of last debit to the deposit account. Any excess credit of interest shall be treated as a set-off against the unpaid advances, if any, and the unpaid balance of the note.

(d) The provisions of paragraphs (a), (b) and (c) of this section shall apply also to corporations. The dissolution thereof by expiration of charter, by forfeiture, or otherwise shall be treated as is the death of an individual as provided in paragraph (a) of this section.

(Authority 38 U.S.C. 3703(c)(1), 3720)

§ 36.4842 Qualification for designated fee appraisers.

To qualify for approval as a designated fee appraiser, an applicant must show to the satisfaction of the Secretary that his or her character, experience, and the type of work in which he or she has had experience for at least 5 years qualifies the applicant to competently appraise and value within a prescribed area the type of property to which the approval relates.

(Authority 38 U.S.C. 3703(c)(1), 3731)

§ 36.4843 Restriction on designated fee appraisers.

(a) A designated fee appraiser shall not make an appraisal, excepting of alterations, improvements, or repairs to real property entailing a cost of not more than $3,500, if such appraiser is an officer, director, trustee, employer, or employee of the lender, contractor, or vendor.

(b) An appraisal made by a designated fee appraiser shall be subject to review and adjustment by the Secretary. The amount determined to be proper upon any such review or adjustment shall constitute the ''reasonable value'' for the purpose of determining the eligibility of the related loan.

(Authority 38 U.S.C. 3703(c)(1), 3731)

§ 36.4845 Delegation of authority.

(a) Except as hereinafter provided, each employee of the Department of Veterans Affairs heretofore or hereafter appointed to, or lawfully filling, any position designated in paragraph (b) of this section is hereby delegated authority, within the limitations and conditions prescribed by law, to exercise the powers and functions of the Secretary with respect to the guaranty or insurance of loans and the rights and liabilities arising therefrom, including but not limited to the adjudication and allowance, disallowance, and compromise of claims; the collection or compromise of amounts due, in money

or other property; the extension, rearrangement, or acquisition of loans; the management and disposition of secured and unsecured notes and other property; and those functions expressly or impliedly embraced within paragraphs (2) through (6) of 38 U.S.C. 3720(a). Incidental to the exercise and performance of the powers and functions hereby delegated, each such employee is authorized to execute and deliver (with or without acknowledgment) for, and on behalf of, the Secretary, evidence of guaranty or of insurance credits and such certificates, forms, conveyances, and other instruments as may be appropriate in connection with the acquisition, ownership, management, sale, transfer, assignment, encumbrance, rental, or other disposition of real or personal property, or, of any right, title, or interest therein, including, but not limited to, contracts of sale, installment contracts, deeds, leases, bills of sale, assignments, and releases; and to approve disbursements to be made for any purpose authorized by 38 U.S.C. chapter 37.

(b)(1) Designated positions are as follows:

(i) Under Secretary for Benefits.

(ii) Director, Loan Guaranty Service.

(iii) Director, Medical and Regional Office Center.

(iv) Director, VA Regional Office and Insurance Center.

(v) Director, Regional Office.

(vi) Loan Guaranty Officer.

(vii) Assistant Loan Guaranty Officer.

(2) The authority hereby delegated to employees of the positions designated in paragraph (b)(1) of this section may, with the approval of the Under Secretary for Benefits, be redelegated.

(c) Nothing in this section shall be construed—

(1) To authorize any such employee to exercise the authority vested in the Secretary under 38 U.S.C. 501 or 3703(a)(2) or to sue, or enter appearance for and on behalf of the Secretary, or confess judgment against the Secretary in any court without the Secretary's prior authorization; or

(2) To include the authority to exercise those powers delegated to the Under Secretary for Benefits, or the Director, Loan Guaranty Service, under §§ 36.4823(e), 36.4838 or 36.4846, *Provided,* that, anything in the regulations concerning guaranty or insurance of loans to veterans to the contrary notwithstanding, any evidence of guaranty or insurance issued on or after July 1, 1948, by any of the employees designated in paragraph (b) of this section or by any employee designated an authorized agent or a loan guaranty agent shall be deemed to have been issued by the Secretary, subject to the defenses reserved in 38 U.S.C. 3721.

(d) Each Regional Office, Regional Office and Insurance Center, and Medical and Regional Office Center shall maintain and keep current a cumulative list of all employees of that Office or Center who, since May 1, 1980, have occupied the positions of Director, Loan Guaranty Officer, and Assistant Loan Guaranty Officer. This list will include each employee's name, title, date the employee assumed the position, and the termination date, if applicable, of the employee's tenure in such position. The list shall be available for public inspection and copying at the Regional Office, or Center, during normal business hours.

(e)(1) Authority is hereby delegated to the officers, designated in paragraph (e)(2) of this section, of the entity performing loan servicing functions under a contract with the Secretary to execute on behalf of the Secretary all documents necessary for the servicing and termination of a loan made or acquired by the Secretary pursuant to 38 U.S.C. chapter 37 (other than under subchapter vi of that chapter). Documents executed under this paragraph include but are not limited to: Loan modification agreements, notices of default and other documents necessary for loan foreclosure or termination, notices of appointment or substitution of trustees under mortgages or deeds of trust, releases or satisfactions of mortgages or deeds of trust, acceptance of deeds-in-lieu of foreclosure, loan assumption agreements, loan assignments, deeds tendered upon satisfaction or conversion of an installment land sales contract, and documents related to filing, pursuing and settling claims with insurance companies relating to hazard coverage on properties securing loans being serviced.

(2) The designated officers are:

(i) Vice President;

(ii) Assistant Vice President; and

(iii) Assistant Secretary.

(3) The Director, Loan Guaranty Service, Washington, DC, shall maintain a log listing all persons authorized to execute documents pursuant to paragraph (e) of this section and the dates such persons held such authority, together with certified copies of resolutions of the board of directors of the entity authorizing such individuals to perform the functions specified in paragraph (e)(1) of this section. These records shall be available for public inspection and copying at the Office of the Director of VA Loan Guaranty Service, Washington, DC 20420.

(f)(1) Authority is hereby delegated to the officers, designated in paragraph (f)(2) of this section, of the entity performing property management and sales functions under a contract with the Secretary to execute on behalf of the Secretary all documents necessary for the management and sales of residential real property acquired by the Secretary pursuant to 38 U.S.C. chapter 37. Documents executed under this paragraph include but are not limited to: Sales contracts, deeds, documents relating to removing adverse occupants, and any documents relating to sales closings. The authorization to execute deeds is limited to deeds other than general warranty deeds.

(2) The designated officers are:

(i) Senior Vice President;

(ii) Vice President;

(iii) Assistant Vice President;

(iv) Assistant Secretary;

(v) Director;

(vi) Senior Manager; and

(vii) Regional Manager.

(3) The Director, Loan Guaranty Service, Washington, DC, shall maintain a log listing all persons authorized to execute documents pursuant to paragraph (f) of this section and the dates such persons held such authority, together with certified copies of resolutions of the board of directors of the entity authorizing such individuals to perform the functions specified in paragraph (f)(1) of this section. These records shall be available for public inspection and copying at the Office of the Director of VA Loan Guaranty Service, Washington, DC 20420.

(Authority: 38 U.S.C. 3720(a)(5))

§ 36.4846 Cooperative loans.

(a) To be eligible for guaranty or insurance, any loan of the following types shall require prior approval of the Under Secretary for Benefits, or the Director, Loan Guaranty Service, who may issue such approval upon such conditions and limitations deemed appropriate, not inconsistent with the provisions of 38 U.S.C. chapter 37 and this subpart:

(1) Any loan which is related to an enterprise in which more than 10 individuals will participate; or

(2) Any loan to be made for the purchase or construction of residential units in any housing development, cooperative or otherwise, the title to which development or to the individual units therein is not to be held directly by the veteran-participants, or which contemplates the ownership or maintenance of more than three units or of their major appurtenances in common.

(b) The issuance of such approval with respect to a residential development under paragraph (a)(2) of this section also shall be subject to such conditions and stipulation as in the judgment of the approving officer are possible and proper to:

(1) Afford reasonable and feasible protection to the rights of the Government as guarantor or insurer, and as subrogee, and to each veteran-participant against loss of his or her respective equity consequent upon the failure of other participants to discharge their obligations;

(2) Provide for a reasonable and workable plan for the operation and management of the project;

(3) Limit the personal liability of each veteran-participant to those sums allocable on a proper ratable basis to the purchase, cost, and maintenance of his or her individual unit or participating interest; and

(4) Limit commercial features to those reasonably calculated to promote the economic soundness of the project and the living convenience of the participants, retaining the essential character of a residential project.

(c) No such project, development, or enterprise may be approved which involves an initial grouping of more than 500 veterans, or a cost of more than five million dollars, unless it is conclusively shown to the satisfaction of the approving officer that a greater number of veterans or dollar amount will assure substantial advantages to the veteran-participants which could not be achieved in a smaller project.

(d) When approved as in this section provided, and upon performance of the conditions indicated in the prior approval, proper guaranty certificate or certificates may be issued in connection with the loan or loans to be guaranteed on behalf of eligible veterans participating in the project, development or enterprise not to exceed in total amount the sum of the guaranties applied for by the individual participants and for which guaranty each participant is then eligible.

(e) In lieu of guaranty as authorized in paragraph (d) of this section, insurance shall be available on application by the lender and all veterans concerned. In such case the insurance credit shall be limited to 15 percent of the obligation of the veteran applicant (subject to available eligibility) and the total insurance credit in respect to the veterans' loans involved in the project shall not exceed 15 percent of the aggregate of the principal sums of the individual indebtedness incurred by the veterans participating in the project for the purpose of acquiring their respective interests therein.

(Authority: 38 U.S.C. 3703(c)(1))

§ 36.4847 Lender appraisal processing program.

(a) *Delegation of authority to lenders to review appraisals and determine reasonable value.*

(1) To be eligible for delegation of authority to review VA appraisals and determine the reasonable value of properties to be purchased with VA guaranteed loans, a lender must—

(i) Have automatic processing authority under 38 U.S.C. 3702(d), and

(ii) Employ one or more staff appraisal reviewers acceptable to the Secretary.

(2) To qualify as a lender's staff appraisal reviewer an applicant must be a full-time member of the lender's permanent staff and may not be employed by, or perform services for, any other mortgagee. The individual must not engage in any private pursuits in which there will be, or appear to be, any conflict of interest between those pursuits and his/her duties, responsibilities, and performance as a Lender Appraisal Processing Program (LAPP) staff appraisal reviewer. Three years of experience is necessary to qualify as a lender's staff appraisal reviewer. That experience must demonstrate a knowledge of, and the ability to apply industry-accepted principles, methods, practices and techniques of appraising, and the ability to competently determine the value of property within a prescribed geographical area. The individual must demonstrate the ability to review the work of others and to recognize deviations from accepted appraisal principles, practices, and techniques; errors in computations, and unjustifiable and unsupportable conclusions.

(3) Lenders that meet the requirements of 38 U.S.C. 3702(d), and have a staff appraisal reviewer determined acceptable by VA, will be authorized to review appraisals and make reasonable value determinations on properties that will be security for VA guaranteed loans. The lender's authorization will be subject to a one-year probationary period. Additionally, lenders must satisfy initial and subsequent VA office case review requirements prior to being allowed to determine reasonable value without VA involvement. The initial office case review requirement must be satisfied in the VA regional office in whose jurisdiction the lender's staff appraisal reviewer is located before the LAPP authority may be utilized by that lender in any other VA office's jurisdiction. To satisfy the initial office case review requirement, the first five cases of each lender staff appraisal reviewer involving properties in the regional office location where the staff appraisal reviewer is located will be processed by him or her up to the point where he or she has made a reasonable value determination and fully drafted, but not issued, the lender's notification of reasonable value letter to the veteran. At that point, and prior to loan closing, each of the five cases will be submitted to the local VA office. After a staff review of each case, VA will issue a Certificate of Reasonable Value, which the lender may use in closing the loan automatically if it meets all other requirements of the VA. If these five cases are found to be acceptable by VA, the lender's staff appraisal reviewer will be allowed to fully process subsequent appraisals for properties located in that VA office's jurisdiction without prior submission to VA and issuance by VA of a Certificate of Reasonable Value. Lenders must also satisfy a subsequent VA office case review requirement in each additional VA office location in which they desire to extend and utilize this authority. Under this requirement, the lender must have first satisfied the initial office case review requirement and then must submit to the additional VA office(s) the first case each staff appraisal reviewer processes in the jurisdiction of that office. As provided under the initial office case review requirement, VA office personnel will issue a Certificate of Reasonable Value for this case and subsequently determine the acceptability of the lender's staff appraisal reviewer's processing. If VA finds this first case to be acceptable, the lender's staff appraisal reviewer will be allowed to fully process subsequent cases in that additional VA office's jurisdiction without prior submission to VA. The initial and subsequent office case review requirements may be expanded by VA if acceptable performance has not been demonstrated. After satisfaction of the initial and subsequent office case review requirements, routine reviews of LAPP cases will be made by VA staff based upon quality control procedures established by the Under Secretary for Benefits. Such review will be made on a random sampling or performance related basis. During the probationary period a high percentage of reviews will be made by VA staff.

(4) The following certification by the lender's nominated staff appraisal reviewer must be provided with the lender's application for delegation of LAPP authority:

I hereby acknowledge and represent that by signing the Uniform Residential Appraisal Report (URAR), FHLMC (Federal Home Loan Mortgage Corporation) Form 70/FNMA (Federal Notice Mortgage Association) Form 1004, I am certifying, in all cases, that I have personally reviewed the appraisal report. In doing so I have considered and utilized recognized professional appraisal techniques, have found the appraisal report to have been prepared in compliance with applicable VA requirements, and concur with the recommendations of the fee appraiser, who was assigned by VA to the case. Furthermore, in those cases where clarifications or corrections have been requested from the VA fee appraiser there has been no pressure or influence exerted on that appraiser to remove or change information that might be considered detrimental to the subject property, or VA's interests, or to reach a predetermined value for that property. *Signature of Staff Appraisal Reviewer.*

(5) Other certifications required from the lender will be specified with particularity in the separate instructions issued by the Secretary, as noted in § 36.4847(b).

(b) *Instructions for LAPP Procedures.* The Secretary will publish separate instructions for processing appraisals under the Lenders Appraisal Processing Program. Compliance with these regulations and the separate instructions issued by the Secretary is deemed by VA to be the minimum exercise of due diligence in processing LAPP cases. Due diligence is considered by VA to represent that care, as is to be properly expected from, and ordinarily exercised by, reasonable and prudent lenders who would be dependent on the property as security to protect its investment.

(c) *VA minimum property requirements.* Lenders are responsible for determining that the property meets VA minimum property requirements. The separate instructions issued by the Secretary will set forth the lender's ability to adjust, remove, or alter the fee appraiser's or fee compliance inspector's recommendations concerning VA minimum property requirements. Condominiums, planned-unit developments and leasehold estates must have been determined acceptable by VA. A condominium or planned-unit development which is acceptable to the Department of Housing and Urban Development or the Department of Agriculture may also be acceptable to VA.

(d) *Adjustment of value recommendations.* The amount of authority to upwardly adjust the fee appraiser's estimated market value during the lender staff appraisal reviewer's initial review of the appraisal report or to subsequently process an appeal of the lender's established reasonable value will be specified in the separate instructions issued by VA as noted in § 36.4847(b). The amount specified must not in any way be considered an administrative adjustment figure which may be applied indiscriminately and without valid basis or justification with the sole purpose of reaching an amount necessary to complete the sale or mortgage transaction.

(1) *Adjustment during initial review.* Any adjustment during the staff appraisal reviewer's initial review of the appraisal report must be fully and clearly justified in writing on the appraisal report form or, if necessary, on an addendum. The basis for the adjustment must be adequate and reasonable by professional appraisal standards. If real estate market or other valid data was utilized in arriving at the decision to make the adjustment, such data must be attached to the appraisal report. All adjustments, comments, corrections, justifications, etc., to the appraisal report must be made in a contrasting color, be clearly legible, and signed and dated by the staff appraisal reviewer.

(2) *Processing appeals.* The authority provided under 38 U.S.C. 3731(d) which permits a lender to obtain a VA fee panel appraiser's report which VA is obligated to consider in an appeal of the established reasonable value shall not apply to cases processed under the authority provided by this section. All appeals of VA fee appraisers' estimated market values or lenders' reasonable value determinations above the amount specified in the separate instructions issued by VA must be submitted, along with the lender's recommendations, if any, to VA for processing and final determination. Unless otherwise authorized in the separate instructions lenders must also submit appeals, regardless of the amount, to VA in all cases where the staff appraisal reviewer has made an adjustment during their initial review of the appraisal report to the fee appraiser's market value estimate. The fee appraiser's estimated market value or lender's reasonable value determination may be increased only when such increase is clearly warranted and fully supported by real estate market or other valid data considered adequate and reasonable by professional appraisal standards and the lender's staff appraisal reviewer clearly and fully justifies the reasoning and basis for the increase in writing on the appraisal report form or an addendum. The staff appraisal reviewer must date and sign the written justification and must cite within it the data used in arriving at the decision to make the increase. All such data shall be attached to the appraisal report form and any addendum.

(e) *Notification.* It will be the responsibility of the lender to notify the veteran borrower in writing of the determination of reasonable value and related conditions specific to the property and to provide the veteran with a copy of the appraisal report. Any delay in processing the notification of value must be documented. Any delay of more than five work days between the date of the lender's receipt of the fee appraiser's report and date of the notification of value to the veteran, without reasonable and documented extenuating circumstances, will not be acceptable. A copy of the lender notification letter to the veteran and the appraisal report must be forwarded to the VA office of jurisdiction at the same time the veteran is notified. In addition, the original appraisal report, related appraisal documentation, and a copy of the reasonable value determination notification to the veteran must be submitted to the VA with the request for loan guaranty.

(f) *Indemnification.* When the Secretary has incurred a loss as a result of a payment of claim under guaranty and in which the Secretary determines an increase made by the lender under § 36.4847(d) was unwarranted, or arbitrary and capricious, the lender shall indemnify the Secretary to the extent the Secretary determines such loss was caused, or increased, by the increase in value.

(g) *Affiliations.* A lender affiliated with a real estate firm builder, land developer or escrow agent as a subsidiary division, investment or any other entity in which it has a financial interest or which it owns may not use this authority for any cases involving the affiliate unless the lender demonstrates to the Secretary's satisfaction that the lender and its affiliate(s) are essentially separate entities that operate independently of each other, free of all cross-influences (e.g., a formal corporate agreement exists which specifically sets forth this fact).

(h) *Quality Control Plans.* The lender must have an effective self-policing or quality control system to ensure the adequacy and quality of their LAPP staff appraisal reviewer's processing and, that its activities do not deviate from high standards of integrity. The quality control system must include frequent, periodic audits that specifically address the appraisal review activity. These audits may be performed by an independent party, or by the lender's independent internal audit division which reports directly to the firm's chief

executive officer. The lender must agree to furnish findings and information under this system to VA on demand. While the quality control personnel need not be appraisers, they should have basic familiarity with appraisal theory and techniques and the ability to prescribe appropriate corrective action(s) in the appraisal review process when discrepancies or problems are identified. The basic elements of the system will be described in separate instructions issued by the Secretary. Copies of the lender's quality control plan or self-policing system evidencing appraisal related matters must be provided to the VA office of jurisdiction with the lender's application for LAPP authority.

(i) *Fees.* The Secretary may require mortgagees to pay an application fee and/or annual fees, including additional fees for each branch office authorized to process cases under the authority delegated under this section, in such amounts and at such times as the Secretary may require.

(j) *Withdrawal of lender authority.* The authority for a lender to determine reasonable value may be withdrawn by the Loan Guaranty Officer when proper cause exists. A lender's authority to make reasonable value determinations shall be withdrawn when the lender no longer meets the basic requirements for delegating the authority, or when it can be shown that the lender's reasonable value determinations have not been made in accordance with VA regulations, requirements, guidelines, instructions or applicable laws, or when there is adequate evidence to support reasonable belief by VA that a particular unacceptable act, practice, or performance by the lender or the lender's staff has occurred. Such acts, practices or performance include, but are not limited to: Demonstrated technical incompetence (i.e., conduct which demonstrates an insufficient knowledge of industry accepted appraisal principles, techniques and practices; or the lack of technical competence to review appraisal reports and make value determinations in accordance with those requirements); substantive or repetitive errors (i.e., any error(s) of a nature that would materially or significantly affect the determination of reasonable value or condition of the property; or a number or series of errors that, considered individually, may not significantly impact the determination of reasonable value or property condition, but which when considered in the aggregate would establish that appraisal reviews or LAPP case processing are being performed in a careless or negligent manner), or continued instances of disregard for VA requirements after they have been called to the lender's attention.

(1) Withdrawal of authority by the Loan Guaranty Officer may be either for an indefinite or a specified period of time. For any withdrawal longer than 90 days, a reapplication for lender authority to process appraisals under these regulations will be required. Written notice will be provided at least 30 days in advance of withdrawal unless the Government's interests are exposed to immediate risk from the lender's activities in which case the withdrawal will be effected immediately. The notice will clearly and specifically set forth the basis and grounds for the action. There is no right to a formal hearing to contest the withdrawal of LAPP processing privileges. However, if within 15 days after receiving notice the lender requests an opportunity to contest the withdrawal, the lender may submit, in person, in writing, or through a representative, information and argument to the Loan Guaranty Officer in opposition to the withdrawal. The Loan Guaranty Officer will make a recommendation to the Regional Office Director who shall make the determination as to whether the action should be sustained, modified or rescinded. The lender will be informed in writing of the decision.

(2) The lender has the right to appeal the Regional Office Director's decision to the Under Secretary for Benefits. In the event of such an appeal, the Under Secretary for Benefits will review all relevant material concerning the matter and make a determination that shall constitute final agency action. If the lender's submission of opposition raises a genuine dispute over facts material to the withdrawal of LAPP authority, the lender will be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses and confront any witness the Veterans Benefits Administration presents. The Under Secretary for Benefits will appoint a hearing officer or panel to conduct the hearing. When such additional proceedings are necessary, the Under Secretary for Benefits shall base the determination on the facts as found, together with any information and argument submitted by the lender.

(3) In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the Under Secretary for Benefits shall make a decision on the basis of all the information in the administrative record, including any submission made by the lender.

(4) Withdrawal of the LAPP authority will require that VA make subsequent determinations of reasonable value for the lender. Consequently, VA staff will review each appraisal report and issue a Certificate of Reasonable Value which can then be used by the lender to close loans on either the prior VA approval or automatic basis.

(5) Withdrawal by VA of the lender's LAPP authority does not prevent VA from also withdrawing automatic processing authority or taking debarment or suspension action based upon the same conduct by the lender.

(Authority: 38 U.S.C. 3731)

(The Office of Management and Budget has approved the information collections requirements of this section under control numbers 2900–0045 and 2900–0513.)

§ 36.4848 Servicer Appraisal Processing Program.

(a) *Delegation of authority to servicers to review liquidation appraisals and determine reasonable value.* Based on the reasonable value, the servicer will be able to determine net value.

(1) To be eligible for delegation of authority to review VA liquidation appraisals and determine the reasonable value for liquidation purposes on properties secured by VA guaranteed or insured loans, a lender must:

(i) Have automatic processing authority under 38 U.S.C. 3702(d), and

(ii) Employ one or more Staff Appraisal Reviewers (SAR) acceptable to the Secretary.

(2) To qualify as a servicer's staff appraisal reviewer an applicant must be a full-time member of the servicer's permanent staff and may not be employed by, or perform services for, any other mortgagee. The individual must not engage in any private pursuits in which there will be, or appear to be, any conflict of interest between those pursuits and his/her duties, responsibilities, and performance as a Servicer Appraisal Processing Program (SAPP) staff appraisal reviewer. Three years of appraisal related experience is necessary to qualify as a servicer's staff appraisal reviewer. That experience must demonstrate knowledge of, and the ability to apply industry-accepted principles, methods, practices and techniques of appraising, and the ability to competently determine the value of property. The individual must demonstrate the ability to review the work of others and to recognize deviations from accepted appraisal principle, practices, and techniques, error in computations, and unjustifiable and unsupportable conclusions.

(3) Servicers that have a staff appraisal reviewer determined

acceptable to VA, will be authorized to review liquidation appraisals and make reasonable value determinations for liquidation purposes on properties that are the security for VA guaranteed or insured loans. Additionally, servicers must satisfy initial VA office case review requirements prior to being allowed to determine reasonable value without VA involvement. The initial office case review requirement must be satisfied in the VA regional loan center in whose jurisdiction the servicer's staff appraisal reviewer is located before the SAPP authority may be utilized by that servicer in any other VA office's jurisdiction. To satisfy the initial office case review requirement, the first five cases of each servicer staff appraisal reviewer involving properties in the regional office location where the staff appraisal reviewer is located will be processed by him or her up to the point where he or she has made a reasonable value determination and fully drafted, but not issued, the servicer's notice of value. At that point, and prior to loan termination, each of the five cases will be submitted to the VA regional loan center having jurisdiction over the property. After a staff review of each case, VA will issue a notice of value which the servicer may use to compute the net value of the property for liquidation purposes. If these five cases are found to be acceptable by VA, the servicer's staff appraisal reviewer will be allowed to fully process subsequent appraisals for properties regardless of jurisdictional location without prior submission to VA and issuance by VA of a notice of value. Where the servicer's reviewer cannot readily meet the jurisdictional review requirement, the SAR applicant may request that VA expand the geographic area of consideration. VA will accommodate such requests if practicable. The initial office case review requirement may be expanded by VA if acceptable performance has not been demonstrated. After satisfaction of the initial office case review requirement, routine reviews of SAPP cases will be made by VA staff based upon quality control procedures established by the Undersecretary for Benefits. Such review will be made on a random sampling or performance related basis.

(4) Certifications required from the servicer will be specified with particularity in the separate instructions issued by the Secretary, as noted in § 36.4848(b).

(b) *Instructions for SAPP Procedures.* The Secretary will publish separate instructions for processing appraisals under the Servicer Appraisal Processing Program. Compliance with these regulations and the separate instructions issued by the Secretary is deemed by VA to be the minimum exercise of due diligence in processing SAPP cases. Due diligence is considered by VA to represent that care, as is to be properly expected from, and ordinarily exercised by, a reasonable and prudent servicer who would be dependent on the property as security to protect its investment.

(c) *Adjustment of value recommendations.* The amount of authority to upwardly adjust the fee appraiser's estimated market value during the servicer staff appraisal reviewer's initial review of the appraisal report or to subsequently process an appeal of the servicer's established reasonable value will be specified in the separate instructions issued by VA as noted in § 36.4848(b). The amount specified must not in any way be considered an administrative adjustment figure which may be applied indiscriminately and without valid basis or justification.

(1) *Adjustment during initial review.* Any adjustment during the staff appraisal reviewer's initial review of the appraisal report must be fully and clearly justified in writing on the appraisal report form or, if necessary, on an addendum. The basis for the adjustment must be adequate and reasonable by professional appraisal standards. If real estate market or other valid data was utilized in arriving at the decision to make the adjustment, such data must be attached to the appraisal report. All adjustments, comments, corrections, justifications, etc., to the appraisal report must be made in a contrasting color, be clearly legible, and signed and dated by the staff appraisal reviewer.

(2) *Processing appeals.* The authority provided under 38 U.S.C. 3731(d) which permits a lender to obtain a VA fee panel appraiser's report which VA is obligated to consider in an appeal of the established reasonable value shall not apply to cases processed under the authority provided by this section. All appeals of VA fee appraiser's estimated market values or servicer's reasonable value determinations above the amount specified in the separate instructions issued by VA must be submitted, along with the servicer's recommendations, if any, to VA for processing and final determination. Unless otherwise authorized in the separate instructions servicers must also submit appeals, regardless of the amount, to VA in all cases where the staff appraisal reviewer has made an adjustment during their initial review of the appraisal report to the fee appraiser's market value estimate. The fee appraiser's estimated market value or servicer's reasonable value determination may be increased only when such increase is clearly warranted and fully supported by real estate market or other valid data considered adequate and reasonable by professional appraisal standards and the servicer's staff appraisal reviewer clearly and fully justifies the reasoning and basis for the increase in writing on the appraisal report form or an addendum. The staff appraisal reviewer must date and sign the written justification and must cite within it the data used in arriving at the decision to make the increase. All such data shall be attached to the appraisal report form and any addendum.

(d) *Indemnification.* When the Secretary has incurred a loss as a result of a payment of claim under guaranty and in which the Secretary determines an increase made by the servicer under § 36.4848(c) was unwarranted, or arbitrary and capricious, the lender shall indemnify the Secretary to the extent the Secretary determines such loss was caused or increased, by the increase in value.

(e) *Affiliations.* A servicer affiliated with a real estate firm, builder, land developer or escrow agent as a subsidiary division, or in any other entity in which it has a financial interest or which it owns may not use the authority for any cases involving the affiliate unless the servicer demonstrates to the Secretary's satisfaction that the servicer and its affiliate(s) are essentially separate entities that operate independently of each other, free of all cross-influences (e.g., a formal corporate agreement exists which specifically sets forth this fact).

(f) *Quality control plans.* The servicer must have an effective self-policing or quality control system to ensure the adequacy and quality of their SAPP staff appraisal reviewer's processing and, that its activities do not deviate from high standards of integrity. The quality control system must include frequent, periodic audits that specifically address the appraisal review activity. These audits may be performed by an independent party, or by the servicer's independent internal audit division which reports directly to the firm's chief executive officer. The servicer must agree to furnish findings and information under this system to VA on demand. While the quality control personnel need not be appraisers, they should have basic familiarity with appraisal theory and techniques and the ability to prescribe appropriate corrective action(s) in the appraisal

review process when discrepancies or problems are identified. The basic elements of the system will be described in separate instructions issued by the Secretary. Copies of the lender's quality control plan or self-policing system evidencing appraisal related matters must be provided to the VA office of jurisdiction with the servicer's application of SAPP authority.

(g) *Fees.* The Secretary will require servicers to pay a $100.00 application fee for each SAR the servicer nominates for approval. The application fee will also apply if the SAR begins work for another servicer.

(h) *Withdrawal of servicer authority.* The authority for a servicer to determine reasonable value may be withdrawn by the Loan Guaranty Officer when proper cause exists. A servicer's authority to make reasonable value determinations shall be withdrawn when the servicer no longer meets the basic requirements for delegating the authority, or when it can be shown that the servicer's reasonable value determinations have not been made in accordance with VA regulations, requirements, guidelines, instructions or applicable laws, or when there is adequate evidence to support reasonable belief by VA that a particular unacceptable act, practice, or performance by the servicer or the servicer's staff has occurred. Such acts, practices, or performance include, but are not limited to: Demonstrated technical incompetence (i.e., conduct which demonstrates an insufficient knowledge of industry accepted appraisal principles, techniques and practices; or the lack of technical competence to review appraisal reports and make value determinations in accordance with those requirements); substantive or repetitive errors (i.e., any error(s) of a nature that would materially or significantly affect the determination of reasonable value or condition of the property; or a number or series of errors that, considered individually, may not significantly impact the determination of reasonable value or property condition, but which when considered in the aggregate would establish that appraisal reviews or SAPP case processing are being performed in a careless or negligent manner), or continued instances of disregard for VA requirements after they have been called to the servicer's attention.

(1) Withdrawal of authority by the Loan Guaranty Officer may be either for an indefinite or a specified period of time. For any withdrawal longer than 90 days a reapplication for servicer authority to process appraisals under these regulations will be required. Written notice will be provided at least 30 days in advance of withdrawal unless the Government's interests are exposed to immediate risk from the servicer's activities in which case the withdrawal will be effected immediately. The notice will clearly and specifically set forth the basis and grounds for the action. There is no right to a formal hearing to contest the withdrawal of SAPP processing privileges. However, if within 15 days after receiving notice the servicer requests an opportunity to contest the withdrawal, the servicer may submit, in person, in writing, or through a representative, information and argument to the Loan Guaranty Officer in opposition to the withdrawal. The Loan Guaranty Officer will make a recommendation to the Regional Loan Center Director who shall make the determination as to whether the action should be sustained, modified or rescinded. The servicer will be informed in writing of the decision.

(2) The servicer has the right to appeal the Regional Loan Center Director's decision to the Undersecretary for Benefits. In the event of such an appeal, the Undersecretary for Benefits will review all relevant material concerning the matter and make a determination that shall constitute final agency action. If the servicer's submission of opposition raises a genuine dispute over facts material to the withdrawal of SAPP authority, the servicer will be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses and confront any witness the Veterans Benefits Administration presents. The Undersecretary for Benefits will appoint a hearing officer or panel to conduct the hearing. When such additional proceedings are necessary, the Undersecretary for Benefits shall base the determination on the facts as found, together with any information and argument submitted by the servicer.

(3) In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the Undersecretary for Benefits shall make a decision on the basis of all the information in the administrative record, including any submission made by the servicer.

(4) Withdrawal of the SAPP authority will require that VA make subsequent determinations of reasonable value for the servicer. Consequently, VA staff will review each appraisal report and issue a Notice of Value which can then be used by the servicer to compute the net value of properties for liquidation purposes.

(5) Withdrawal by VA of the servicer's SAPP authority does not prevent VA from also withdrawing automatic processing authority or taking debarment or suspension action based upon the same conduct of the servicer.

(Authority 38 U.S.C. 3703(c)(1), 3731 and 3732)

(The Office of Management and Budget has approved the information collection requirements in this section under control numbers 2900–0045 and 2900–0513.)

§ 36.4849 Waivers, consents, and approvals; when effective.

No waiver, consent, or approval required or authorized by the regulations concerning guaranty or insurance of loans to veterans shall be valid unless in writing signed by the Secretary or the subordinate officer to whom authority has been delegated by the Secretary.

(Authority 38 U.S.C. 3703(c)(1))

§ 36.4850 Servicing procedures for holders.

(a) *Establishment of loan servicing program.* The holder of a loan guaranteed or insured by the Secretary shall develop and maintain a loan servicing program which follows accepted industry standards for servicing of similar type conventional loans. The loan servicing program established pursuant to this section may employ different servicing approaches to fit individual borrower circumstances and avoid establishing a fixed routine. However, it must incorporate each of the provisions specified in paragraphs (b) through (l) of this section.

(b) *Procedures for providing information.* (1) Loan holders shall establish procedures to provide loan information to borrowers, arrange for individual loan consultations upon request and maintain controls to assure prompt responses to inquiries. One or more of the following means of making information readily available to borrowers is required.

(i) An office staffed with trained servicing personnel with access to loan account information located within 200 miles of the property.

(ii) Toll-free telephone service or acceptance of collect telephone calls at an office capable of providing needed information.

(2) All borrowers must be informed of the system available for obtaining answers to loan inquiries, the office from which the needed information may be obtained, and reminded of the system at least annually.

(c) *Statement for income tax purposes.* Before February 1st of each calendar year, the holder shall furnish to the borrower a statement of the interest paid and, if applicable, a

statement of the taxes disbursed from the escrow account during the preceding year. At the borrower's request, the holder shall furnish a statement of the escrow account sufficient to enable the borrower to reconcile the account.

(d) *Change of servicing.* Whenever servicing of a loan guaranteed or insured by the Secretary is transferred from one holder to another, notice of such transfer by both the transferor and transferee, the form and content of such notice, the timing of such notice, the treatment of payments during the period of such transfer, and damages and costs for failure to comply with these requirements shall be governed by the pertinent provisions of the Real Estate Settlement Procedures Act as administered by the Department of Housing and Urban Development.

(e) *Escrow accounts.* A holder of a loan guaranteed or insured by the Secretary may collect periodic deposits from the borrower for taxes and/or insurance on the security and maintain a tax and insurance escrow account provided such a requirement is authorized under the terms of the security instruments. In maintaining such accounts, the holder shall comply with the pertinent provisions of the Real Estate Settlement Procedures Act.

(f) *System for servicing delinquent loans.* In addition to the requirements of the Real Estate Settlement Procedures Act, concerning the duties of the loan servicer to respond to borrower inquiries, to protect the borrower's credit rating during a payment dispute period, and to pay damages and costs for noncompliance, holders shall establish a system for servicing delinquent loans which ensures that prompt action is taken to collect amounts due from borrowers and minimize the number of loans in a default status. The holder's servicing system must include the following:

(1) An accounting system which promptly alerts servicing personnel when a loan becomes delinquent;

(2) A collection staff which is trained in techniques of loan servicing and counseling delinquent borrowers to advise borrowers how to cure delinquencies, protect their equity and credit rating and, if the default is insoluble, pursue alternatives to foreclosure;

(3) Procedural guidelines for individual analysis of each delinquency;

(4) Instructions and appropriate controls for sending delinquent notices, assessing late charges, handling partial payments, maintaining servicing histories and evaluating repayment proposals;

(5) Management review procedures for evaluating efforts made to collect the delinquency and the response from the borrower before a decision is made to initiate action to liquidate a loan;

(6) Procedures for reporting delinquencies of 90 days or more and loan terminations to major consumer credit bureaus as specified by the Secretary and for informing borrowers that such action will be taken; and

(7) Controls to ensure that all notices required to be given to the Secretary on delinquent loans are provided timely and in such form as the Secretary shall require.

(g) *Collection actions.* (1) Holders shall employ collection techniques which provide flexibility to adapt to the individual needs and circumstances of each borrower. A variety of collection techniques may be used based on the holder's determination of the most effective means of contact with borrowers during various stages of delinquency. However, at a minimum the holder's collection procedures must include the following actions:

(i) An effort, concurrent with the initial late payment notice to establish contact with the borrower(s) by telephone. When talking with the borrower(s), the holder should attempt to determine why payment was not made and emphasize the importance of remitting loan installments as they come due.

(ii) A letter to the borrower(s) if payment has not been received within 30 days after it is due and telephone contact could not be made. This letter should emphasize the seriousness of the delinquency and the importance of taking prompt action to resolve the default. It should also notify the borrower(s) that the loan is in default, state the total amount due and advise the borrower(s) how to contact the holder to make arrangements for curing the default.

(iii) In the event the holder has not established contact with the borrower(s) and has not determined the financial circumstances of the borrower(s) or established a reason for the default or obtained agreement to a repayment plan from the borrower(s), then a face-to-face interview with the borrower(s) or a reasonable effort to arrange such a meeting is required.

(iv)(A) A letter to the borrower if payment has not been received:

(*1*) In the case of a default occurring within the first 6 months following loan closing or the execution of a modification agreement pursuant to § 36.4815, within 45 calendar days after such payment was due; or

(*2*) In the case of any other default, within 75 calendar days after such payment was due.

(B) The letter required by paragraph (g)(1)(iv)(A) must be mailed no later than 7 calendar days after the payment is delinquent for the time period stated in paragraph (g)(1)(iv)(A) and shall:

(*1*) Provide the borrower with a toll-free telephone number and, if available, an e-mail address for contacting the servicer;

(*2*) Explain loss mitigation options available to the borrower;

(*3*) Emphasize that the intent of servicing is to retain home ownership whenever possible; and

(*4*) Contain the following language:

> The delinquency of your mortgage loan is a serious matter that could result in the loss of your home. If you are the veteran whose entitlement was used to obtain this loan, you can also lose your entitlement to a future VA home loan guaranty. If you are not already working with us to resolve the delinquency, please call us to discuss your workout options. You may be able to make special payment arrangements that will reinstate your loan. You may also qualify for a repayment plan or loan modification.
>
> VA has guaranteed a portion of your loan and wants to ensure that you receive every reasonable opportunity to bring your loan current and retain your home. VA can also answer any questions you have regarding your entitlement. If you have access to the Internet and would like to obtain more information, you may access the VA web site at *www.va.gov.* You may also learn where to speak to a VA Loan Administration representative by calling 1–800–827–1000.

(2) The holder must provide a valid explanation of any failure to perform these collection actions when reporting loan defaults to the Secretary. A pattern of such failure may be a basis for sanctions under 2 CFR parts 180 and 801.

(h) *Conducting interviews with delinquent borrowers.* When personal contact with the borrower(s) is established, the holder shall solicit sufficient information to properly evaluate the prospects for curing the default and whether the granting of forbearance or other relief assistance would be appropriate. At a minimum, the holder must make a reasonable effort to establish the following:

(1) The reason for the default and whether the reason is a temporary or permanent condition;

(2) The present income and employment of the borrower(s);

(3) The current monthly expenses of the borrower(s) including household and debt obligations;

(4) The current mailing address and telephone number of the borrower(s); and

(5) A realistic and mutually satisfactory arrangement for curing the default.

(i) *Property inspections.* (1) The holder shall make an inspection of the property securing the loan whenever it becomes aware that the physical condition of the security may be in jeopardy. Unless a repayment agreement is in effect, a property inspection shall also be made at the following times:

(i) Before the 60th day of delinquency or before initiating action to liquidate a loan, whichever is earlier; and

(ii) At least once each month after liquidation proceedings have been started unless servicing information shows the property remains owner-occupied.

(2) Whenever a holder obtains information which indicates that the property securing the loan is abandoned, it shall make appropriate arrangements to protect the property from vandalism and the elements. Thereafter, the holder shall schedule inspections at least monthly to prevent unnecessary deterioration due to vandalism, or neglect. With respect to any loan more than 60 calendar days delinquent, if the property is abandoned, this fact must be reported to the Secretary as required in § 36.4817(c)(10) and immediate action should be initiated by the servicer to terminate the loan once the abandonment has been confirmed.

(j) *Collection records.* The holder shall maintain individual file records of collection action on delinquent loans and make such records available to the Secretary for inspection on request. Such collection records shall show:

(1) The dates and content of letters and notices which were mailed to the borrower(s);

(2) Dated summaries of each personal servicing contact and the result of same;

(3) The indicated reason(s) for default; and

(4) The date and result of each property inspection.

(k) *Quality control procedures.* No later than 180 days after the effective date of this regulation, each loan holder shall establish internal controls to periodically assess the quality of the servicing performed on loans guaranteed by the Secretary and assure that all requirements of this section are being met. Those procedures must provide for a review of the holder's servicing activities at least annually and include an evaluation of delinquency and foreclosure rates on loans in its portfolio which are guaranteed by the Secretary. As part of its evaluation of delinquency and foreclosure rates, the holder shall:

(1) Collect and maintain appropriate data on delinquency and foreclosure rates to enable the holder to evaluate effectiveness of its collection efforts;

(2) Determine how its VA delinquency and foreclosure rates compare with rates in reports published by the industry, investors and others; and,

(3) Analyze significant variances between its foreclosure and delinquency rates and those found in available reports and publications and take appropriate corrective action.

(l) *Provision of Data.* Holders shall provide available statistical data on delinquency and foreclosure rates and their analysis of such data to the Secretary upon request.

(Authority 38 U.S.C. 3703(c)(1))

(The Office of Management and Budget has approved the information collection requirements in this section under Control Number 2900–0530.)

§ 36.4851 Minimum property and construction requirements.

No loan for the purchase or construction of residential property shall be eligible for guaranty or insurance unless such property complies or conforms with those standards of planning, construction, and general acceptability that may be applicable thereto and prescribed by the Secretary pursuant to 38 U.S.C. 3704(a).

(Authority 38 U.S.C. 3703(c)(1))

§ 36.4852 Authority to close loans on the automatic basis.

(a) *Supervised lender authority.* Supervised lenders of the classes described in 38 U.S.C. 3702(d)(1) and (2) are authorized by statute to process VA guaranteed home loans on the automatic basis. This category of lenders includes any Federal land bank, national bank, State bank, private bank, building and loan association, insurance company, credit union or mortgage and loan company that is subject to examination and supervision by an agency of the United States or of any State or by any State.

(b) *Non-supervised lender authority.* Non-supervised lenders of the class described in 38 U.S.C. 3702(d)(3) must apply to the Secretary for authority to process loans on the automatic basis. Each of the minimum requirements listed below must be met by applicant lenders.

(1) *Experience.* The applicant lender must meet one of the following experience requirements:

(i) The applicant lender must have been actively engaged in originating VA loans for at least two years, have a VA Lender ID number and have originated and closed a minimum of ten VA loans within the past two years, excluding interest rate reduction refinance loans (IRRRLs), that have been properly documented and submitted in compliance with VA requirements and procedures; or

(ii) The applicant lender must have a VA ID number and, if active for less than two years, have originated and closed at least 25 VA loans, excluding IRRRLs, that have been properly documented and submitted in compliance with VA requirements and procedures; or

(iii) Each principal officer of the applicant lender, who is actively involved in managing origination functions, must have a minimum of two recent years' management experience in the origination of VA loans. This experience may be with the current or prior employer. For the purposes of this requirement, principal officer is defined as president or vice president; or

(iv) If the applicant lender has been operating as an agent for a non-supervised automatic lender (sponsoring lender), the firm must submit documentation confirming that it has a VA Lender ID number and has originated a minimum of ten VA loans, excluding IRRRLs, over the past two years. If active for less than two years, the agent must have originated at least 25 VA loans. The required documentation is a copy of the VA letter approving the applicant lender as an agent for the sponsoring lender; a copy of the corporate resolution, describing the functions the agent was to perform, submitted to VA by the sponsoring lender; and a letter from a senior officer of the sponsoring lender indicating the number of VA loans submitted by the agent each year and that the loans have been properly documented and submitted in compliance with VA requirements and procedures.

(2) *Underwriter.* A senior officer of the applicant lender must nominate a full-time qualified employee(s) to act in the applicant lender's behalf as underwriter(s) to personally review and make underwriting decisions on VA loans to be closed on the automatic basis.

(i) Nominees for underwriter must have a minimum of three years experience in processing, pre-underwriting or underwriting mortgage loans. At least one recent year of this experience must have included making underwriting decisions on VA loans. (Recent is defined as within the past three years.) A VA nomination and current resume, outlining the underwriter's specific experience with

VA loans, must be submitted for each underwriter nominee.

(ii) Alternatively, if an underwriter does not have the experience outlined above, the underwriter must submit documentation verifying that he or she is a current Accredited Residential Underwriter (ARU) as designated by the Mortgage Bankers Association (MBA).

(iii) If an underwriter is not located in the lender's corporate office, then a senior officer must certify that the underwriter reports to and is supervised by an individual who is not a branch manager or other person with production responsibilities.

(iv) All VA-approved underwriters must attend a 1-day (eight-hour) training course on underwriter responsibilities, VA underwriting requirements, and VA administrative requirements, including the usage of VA forms, within 90 days of approval (if VA is unable to make such training available within 90 days, the underwriter must attend the first available training). Immediately upon approval of a VA underwriter, the office of jurisdiction will contact the underwriter to schedule this training at a VA regional office (VARO) of the underwriter's choice. This training is required for all newly approved VA underwriters, including those who qualified for approval based on an ARU designation, as well as VA-approved underwriters who have not underwritten VA-guaranteed loans in the past 24 months. Furthermore, and at the discretion of any VARO in whose jurisdiction the lender is originating VA loans, VA-approved underwriters who consistently approve loans that do not meet VA credit standards may be required to retake this training.

(3) *Underwriter Certification.* The lender must certify that all underwriting decisions as to whether to accept or reject a VA loan will be made by a VA-approved underwriter. In addition each VA-approved underwriter will be required to certify on each VA loan that he or she approves that the loan has been personally reviewed and approved by the underwriter.

(4) *Financial Requirements.* Each application must include the most recent annual financial statement audited and certified by a certified public accountant (CPA). If the date of the annual financial statement precedes that of the application by more than six months, the lender must also attach a copy of its latest internal financial statement. Lenders are required to meet either the working capital or the minimum net worth financial requirement as defined below.

(i) *Working Capital.* A minimum of $50,000 in working capital must be demonstrated.

(A) Working capital is a measure of an applicant lender's liquidity, or the ability to pay its short-term debts. Working capital is defined as the excess of current assets over current liabilities. Current assets are defined as cash or other liquid assets convertible into cash within a 1-year period. Current liabilities are defined as debts that must be paid within the same 1-year time frame.

(B) The VA determination of whether a lender has the required minimum working capital is based on the balance sheet of the lender's annual audited financial statement. Therefore, either the balance sheet must be classified to distinguish between current and fixed assets and between current and long-term liabilities or the information must be provided in a footnote to the statement.

(ii) *Net Worth.* Lenders must show evidence of a minimum of $ 250,000 in adjusted net worth. Net worth is a measure of an applicant lender's solvency, or its ability to exist in the long run, quantified by the payment of long-term debts. Net worth as defined by generally accepted accounting principles (GAAP) is total assets minus total liabilities. Adjusted net worth for VA purposes is the same as the adjusted net worth required by the Department of Housing and Urban Development (HUD), net worth less certain unacceptable assets including:

(A) Any assets of the lender pledged to secure obligations of another person or entity.

(B) Any asset due from either officers or stockholders of the lender or related entities, in which the lender's officers or stockholders have a personal interest, unrelated to their position as an officer or stockholder.

(C) Any investment in related entities in which the lender's officers or stockholders have a personal interest unrelated to their position as an officer or stockholder.

(D) That portion of an investment in joint ventures, subsidiaries, affiliates and/or other related entities which is carried at a value greater than equity, as adjusted. ''Equity as adjusted'' means the book value of the related entity reduced by the amount of unacceptable assets carried by the related entity.

(E) All intangibles, such as goodwill, covenants not to compete, franchisee fees, organization costs, etc., except unamortized servicing costs carried at a value established by an arm's-length transaction and presented in accordance with generally accepted accounting principles.

(F) That portion of an asset not readily marketable and for which appraised values are very subjective, carried at a value in excess of a substantially discounted appraised value. Assets such as antiques, art work and gemstones are subject to this provision and should be carried at the lower of cost or market.

(G) Any asset that is principally used for the personal enjoyment of an officer or stockholder and not for normal business purposes. Adjusted net worth must be calculated by a CPA using an audited and certified balance sheet from the lender's latest financial statements. ''Personal interest'' as used in this section indicates a relationship between the lender and a person or entity in which that specified person (e.g., spouse, parent, grandparent, child, brother, sister, aunt, uncle or in-law) has a financial interest in or is employed in a management position by the lender.

(5) *Lines of credit.* The lender applicant must have one or more lines of credit aggregating at least $ 1 million. The identity of the source(s) of warehouse lines of credit must be submitted to VA and the applicant must agree that VA may contact the named source(s) for the purpose of verifying the information. A line of credit must be unrestricted, that is, funds are available upon demand to close loans and are not dependent on prior investor approval. A letter from the company(ies) verifying the unrestricted line(s) of credit must be submitted with the application for automatic authority.

(6) *Permanent investors.* If the lender customarily sells loans it originates, it must have a minimum of two permanent investors. The names, addresses and telephone numbers of the permanent investors must be submitted with the application.

(7) *Liaison.* The lender applicant must designate an employee and an alternate to be the primary liaison with VA. The liaison officers should be thoroughly familiar with the lender's entire operation and be able to respond to any query from VA concerning a particular VA loan or the firm's automatic authority.

(8) *Other considerations.* All applications will also be reviewed in light of the following considerations:

(i) There must be no factors that indicate that the firm would not exercise the care and diligence required of a lender originating and closing VA loans on the automatic basis; and

(ii) In the event the applicant lender, any member of the board of directors, or any principal officer has ever been debarred or suspended by any Federal

agency or department, or any of its directors or officers has been a director or officer of any other lender or corporation that was so debarred or suspended, or if the lender applicant ever had a servicing contract with an investor terminated for cause, a statement of the facts must be submitted with the application for automatic authority.

(9) *Quality Control System.* In order to be approved as a non-supervised lender for automatic-processing authority, the lender must implement a written quality control system which ensures compliance with VA requirements. The lender must agree to furnish findings under its systems to VA on demand. The elements of the quality control system must include the following:

(i) *Underwriting policies.* Each office of the lender shall maintain copies of VA credit standards and all available VA underwriting guidelines.

(ii) *Corrective measures.* The system should ensure that effective corrective measures are taken promptly when deficiencies in loan originations are identified by either the lender or VA. Any cases involving major discrepancies which are discovered under the system must be reported to VA.

(iii) *System integrity.* The quality control system should be independent of the mortgage loan production function.

(iv) *Scope.* The review of underwriting decisions and certifications must include compliance with VA underwriting requirements, sufficiency of documentation and soundness of underwriting judgments.

(v) *Appraisal quality.* For lenders approved for the Lender Appraisal Processing Program (LAPP), the quality control system must specifically contain provisions concerning the adequacy and quality of real property appraisals. While the lender's quality control personnel need not be appraisers, they should have basic familiarity with appraisal theory and techniques so that they can select appropriate cases for review if discretionary sampling is used, and prescribe appropriate corrective action(s) in the appraisal review process when discrepancies or problems are identified. Copies of the lender's quality control plan or self-policing system evidencing appraisal related matters must be provided to the VA office of jurisdiction.

(10) *Courtesy closing.* The lender applicant must certify to VA that it will not close loans on an automatic basis as a courtesy or accommodation for other mortgage lenders, whether or not such lenders are themselves approved to close on an automatic basis without the express approval of VA. However, a lender with automatic authority may close loans for which information and supporting credit data have been developed on its behalf by a duly authorized agent.

(11) *Probation.* Lenders meeting these requirements will be approved to close VA loans on an automatic basis for a 1-year period. At the end of this period, the lender's quality of underwriting, the completeness of loan submissions, compliance with VA requirements and procedures, and the delinquency and foreclosure rates will be reviewed.

(12) *Extensions of Automatic Authority.* When a lender wants its automatic authority extended to another State, the request must be submitted, with the fee designated in paragraph (e)(5) of this section, to the VA regional office having jurisdiction in the State where the lender's corporate office is located.

(i) When a lender wants its automatic authority to include loans involving a real estate brokerage and/or a residential builder or developer in which it has a financial interest, owns, is owned by, or with which it is affiliated, the following documentation must be submitted:

(A) A corporate resolution from the lender and each affiliate indicating that they are separate entities operating independently of each other. The lender's corporate resolution must indicate that it will not give more favorable underwriting consideration to its affiliate's loans, and the affiliate's corporate resolution must indicate that it will not seek to influence the lender to give their loans more favorable underwriting consideration.

(B) Letters from permanent investors indicating the percentage of all VA loans based on the affiliate's production originated by the lender over a 1-year period that are past due 90 days or more. This delinquency ratio must be no higher than the national average for the same period for all mortgage loans.

(ii) When a lender wants its automatic authority extended to additional States, the lender must indicate how it plans to originate VA loans in those States. Unless a lender proposes a telemarketing plan, VA requires that a lender have a presence in the State, that is, a branch office, an agent relationship, or that it is a reasonable distance from one of its offices in an adjacent State, i.e., 50 miles. If the request is based on an agency relationship, the documentation outlined in paragraph (b)(13) must be submitted with the request for extension.

(13) *Use of Agents.* A lender using an agent to perform a portion of the work involved in originating and closing a VA-guaranteed loan on an automatic basis must take full responsibility by certification for all acts, errors and omissions of the agent or other entity and its employees for the work performed. Any such acts, errors or omissions will be treated as those of the lender and appropriate sanctions may be imposed against the lender and its agent. Lenders requesting an agent must submit the following documentation to the VA regional office having jurisdiction for the lender's corporate office:

(i) A corporate resolution certifying that the lender takes full responsibility for all acts, errors and omissions of the agent that it is requesting. The corporate resolution must also identify the agent's name and address, and the geographic area in which the agent will be originating and/or closing VA loans; whether the agent is authorized to issue interest rate lock-in agreements on behalf of the lender; and outline the functions the agent is to perform. Alternatively, the lender may submit a blanket corporate resolution which sets forth the functions of any and all agents and identifies individual agents by name, address, and geographic area in separate letters which refer to the blanket resolution.

(ii) When the VA regional office having jurisdiction for the lender's corporate office acknowledges receipt of the lender's request in writing, the agent is thereby authorized to originate VA loans on the lender's behalf.

(Authority: 38 U.S.C. 501(a), 3702(d))

(c) *Reporting responsibility.* A lender approved to close loans on the automatic basis who subsequently fails to meet the requirements of this section must report to VA the circumstances surrounding the deficiency and the remedial action to be taken to cure it. Failure to advise VA in a timely manner could result in a lender's loss of its approval to close VA loans on the automatic basis.

(Authority: 38 U.S.C. 501(a), 3702(d))

(d) *Annual recertification.* Non-supervised lenders of the class described in 38 U.S.C. 3702(d)(3) must be recertified annually for authority to process loans on the automatic basis. The following minimum annual recertification requirements must be met by each lender approved for automatic authority:

(1) *Financial requirements.* A lender must submit, within 120 days following the end of its fiscal year, an audited and certified financial statement with a classified balance sheet or a separate

footnote for adjusted net worth to VA Central Office (264) for review. The same minimum financial requirements described in § 36.4852(b)(5) must be maintained and verified annually in order to be recertified for automatic authority.

(2) *Processing annual lender data.* The VA regional office having jurisdiction for the lender's corporate office will mail an annual notice to the lender requesting current information on the lender's personnel and operation. The lender is required to complete the form and return it with the appropriate annual renewal fees to the VA regional office.

(Authority: 38 U.S.C. 501(a), 3702(d))

(e) *Lender fees.* To participate as a VA automatic lender, non-supervised lenders of the class described in 38 U.S.C. 3702(d)(3) shall pay fees as follows:

(1) $500 for new applications;

(2) $200 for reinstatement of lapsed or terminated automatic authority;

(3) $100 for each underwriter approval;

(4) $100 for each agent approval;

(5) A minimum fee of $100 for any other VA administrative action pertaining to a lender's status as an automatic lender;

(6) $200 annually for certification of home offices; and

(7) $100 annually for each agent renewal.

(f) *Supervised lender fees.* Supervised lenders of the classes described in paragraphs (d)(1) and (d)(2) of 38 U.S. Code 3702 participating in VA's Loan Guaranty Program shall pay fees as follows:

(1) $100 fee for each agent approval; and

(2) $100 annually for each agent renewal.

(Authority: 38 U.S.C. 501(a) and 3703(c)(1))

(g) *LAPP fees.* Lenders participating in VA's Lender Appraisal Processing Program shall pay a fee of $100 for approval of each staff appraisal reviewer.

(Authority 38 U.S.C. 3703(c)(1))

§ 36.4853 Withdrawal of authority to close loans on the automatic basis.

(a)(1) As provided in 38 U.S.C. 3702(e), the authority of any lender to close loans on the automatic basis may be withdrawn by the Secretary at any time upon 30 days notice. The automatic processing authority of both supervised and non-supervised lenders may be withdrawn for engaging in practices which are imprudent from a lending standpoint or which are prejudicial to the interests of veterans or the Government but are of a lesser degree than would warrant complete suspension or debarment of the lender from participation in the program.

(2) Automatic-processing authority may be withdrawn at any time for failure to meet basic qualifying and/or annual recertification criteria.

(i) *Non-supervised lenders.* (A) Automatic authority may be withdrawn for lack of a VA-approved underwriter, failure to maintain $50,000 in working capital or $250,000 in adjusted net worth, or failure to file required financial information.

(B) During the 1-year probationary period for newly approved lenders, automatic authority may be temporarily or permanently withdrawn for any of the reasons set forth in this section regardless of whether deficiencies previously have been brought to the attention of the probationary lender.

(ii) *Supervised lenders.* Automatic authority will be withdrawn for loss of status as an entity subject to examination and supervision by a Federal or State supervisory agency as required by 38 U.S.C. 3702(d).

(Authority: 38 U.S.C. 3702(d))

(3) Automatic processing authority may also be withdrawn for any of the causes for debarment set forth in 2 CFR parts 180 and 801.

(b) Authority to close loans on the automatic basis may also be temporarily withdrawn for a period of time under the following schedule.

(1) Withdrawal for 60 days may occur when:

(i) Automatic loan submissions show deficiencies in credit underwriting, such as use of unstable sources of income to qualify the borrower, ignoring significant adverse credit items affecting the applicant's creditworthiness, etc., after such deficiencies have been repeatedly called to the lender's attention;

(ii) Employment or deposit verifications are handcarried by applicants or otherwise improperly permitted to pass through the hands of a third party;

(iii) Automatic loan submissions are consistently incomplete after such deficiencies have been repeatedly called to the lender's attention by VA; or

(iv) There are continued instances of disregard of VA requirements after they have been called to the lender's attention.

(2) Withdrawal for 180 days may occur when:

(i) Loans are closed automatically which conflict with VA credit standards and which would not have been made by a lender acting prudently;

(ii) The lender fails to disclose to VA significant obligations or other information so material to the veteran's ability to repay the loan that undue risk to the Government results;

(iii) Employment or deposit verifications are allowed to be handcarried by applicant or otherwise mishandled, resulting in the submission of significant misinformation to VA;

(iv) Substantiated complaints are received that the lender misrepresented VA requirements to veterans to the detriment of their interests (e.g., veteran was dissuaded from seeking a lower interest rate based on lender's incorrect advice that such options were precluded by VA requirements);

(v) Closing documentation shows instances of improper charges to the veteran after the impropriety of such charges has been called to the lender's attention by VA, or refusal to refund such charges after notification by VA; or

(vi) There are other instances of lender actions which are prejudicial to the interests of veterans such as deliberate delays in scheduling loan closings.

(3) Withdrawal for a period of from one year to three years may occur when:

(i) The lender fails to properly disburse loans (e.g., loan disbursement checks returned due to insufficient funds);

(ii) There is involvement by the lender in the improper use of a veteran's entitlement (e.g., knowingly permitting the veteran to violate occupancy requirements, lender involvement in sale of veteran's entitlement, etc.).

(4) A continuation of actions that have led to previous withdrawal of automatic authority justifies withdrawal of automatic authority for the next longer period of time.

(5) Withdrawal of automatic processing authority does not prevent a lender from processing VA guaranteed loans on the prior approval basis.

(6) Action by VA to remove a lender's automatic authority does not prevent VA from also taking debarment or suspension action based on the same conduct by the lender.

(7) VA field facilities are authorized to withdraw automatic privileges for 60 days, based on any of the violations set forth in paragraphs (b)(1) through (b)(3) of this section, for non-supervised lenders without operations in other stations' jurisdictions. All determinations regarding withdrawal of automatic authority for longer periods of time or multi-jurisdictional lenders must be made in Central Office.

(c) VA will provide 30 days notice of a withdrawal of automatic authority in order to enable the lender to either close

or obtain prior approval for a loan on which processing has begun. There is no right to a formal hearing to contest the withdrawal of automatic processing privileges. However, if within 15 days after receiving notice the lender requests an opportunity to contest the withdrawal, the lender may submit in person, in writing, or through a representative, information and argument in opposition to the withdrawal.

(d) If the lender's submission in opposition raises a dispute over facts material to the withdrawal of automatic authority, the lender will be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witnesses VA presents. The Under Secretary for Benefits will appoint a hearing officer or panel to conduct the hearing.

(e) A transcribed record of the proceedings shall be made available at cost to the lender, upon request, unless the requirement for a transcript is waived by mutual agreement.

(f) In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the Under Secretary for Benefits shall make a decision on the basis of all the information in the administrative record, including any submission made by the lender.

(g) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact will be prepared by the hearing officer or panel. The Under Secretary for Benefits shall base the decision on the facts as found, together with any information and argument submitted by the lender and any other information in the administrative record.

(Authority: 38 U.S.C. 3703(c)(1))

(The Office of Management and Budget has approved the information collection requirements in this section under control numbers 2900–0574.)

§ 36.4854 Estate of veteran in real property.

(a) The title of the estate in the realty acquired by the veteran, wholly or partly with the proceeds of a guaranteed or insured loan, or owned by him and on which construction, or repairs, or alterations or improvements are to be made, shall be such as is acceptable to informed buyers, title companies, and attorneys, generally, in the community in which the property is situated, except as modified by paragraph (b) of this section. Such estate shall be not less than:

(1) A fee simple estate therein, legal or equitable; or

(2) A leasehold estate running or renewable at the option of the lessee for a period of not less than 14 years from the maturity of the loan, or to any earlier date at which the fee simple title will vest in the lessee, which is assignable or transferable, if the same be subjected to the lien; however, a leasehold estate which is not freely assignable and transferable will be considered an acceptable estate if it is determined by the Under Secretary for Benefits, or the Director, Loan Guaranty Service:

(i) That such type of leasehold is customary in the area where the property is located,

(ii) That a veteran or veterans will be prejudiced if the requirement for free assignability is adhered to; and

(iii) That the assignability and other provisions applicable to the leasehold estate are sufficient to protect the interests of the veteran and the Government and are otherwise acceptable; or

(3) A life estate, provided that the remainder and reversionary interests are subjected to the lien; or

(4) A beneficial interest in a revocable Family Living Trust that ensures that the veteran, or veteran and spouse, have an equitable life estate, provided the lien attaches to any remainder interest and the trust arrangement is valid under State law.

(b) Any such property or estate will not fail to comply with the requirements of paragraph (a) of this section by reason of the following:

(1) Encroachments;

(2) Easements;

(3) Servitudes;

(4) Reservations for water, timber, or subsurface rights; or

(5) Sale and lease restrictions:

(i) Except as to condominiums, the right in any grantor or cotenant in the chain of title, or a successor of either, to purchase for cash, which right was established by an instrument recorded prior to December 1, 1976, and by the terms thereof is exercisable only if:

(A) An owner elects to sell;

(B) The option price is not less than the price at which the then owner is willing to sell to another; and

(C) Exercised within 30 days after notice is mailed by registered mail to the address of optionee last known to the then owner of the then owner's election to sell, stating the price and the identity of the proposed vendee;

(ii) A condominium estate established by the filing for record of the Master Deed, or other enabling document before December 1, 1976 will not fail to comply with the requirements of paragraph (a) of this section by reason of:

(A) Prohibition against leasing a unit for a period of less than 6 months.

(B) The existence of a right of first option to purchase or right to provide a substitute buyer reserved to the condominium association provided such option or right is exercisable only if:

(*1*) An owner elects to sell;

(*2*) The option price is not less than the price at which the then owner is willing to sell to another;

(*3*) The terms and conditions under which the option price is to be paid are identical to or are not less favorable to the owner than the terms and conditions under which the owner was willing to sell to the owner's prospective buyer; and

(*4*) Notice of the association's decision to exercise the option must be mailed to the owner by registered or certified mail within 30 days after notice is mailed by registered or certified mail to the address of the association last known to the owner of the owner's election to sell, stating the price, terms of sale, and the identity of the proposed vendee.

(iii) Any property subject to a restriction on the owner's right to convey to any party of the owner's choice, which restriction is established by a document recorded on or after December 1, 1976, will not qualify as security for a guaranteed or insured loan. A prohibition or restriction on leasing an individual unit in a condominium will not cause the condominium estate to fail to qualify as security for such loan, provided the restriction is in accordance with § 36.4862(c).

(iv) Notwithstanding the provisions of paragraphs (b)(5)(i), (ii), and (iii) of this section, a property shall not be considered ineligible pursuant to paragraph (a) of this section if:

(A) The veteran obtained the property under a State or local political subdivision program designed to assist low-or moderate-income purchasers, and as a condition the purchaser must agree to one or more of the following restrictions:

(*1*) If the property is resold within a time period as established by local law or ordinance, after the purchaser acquires title, the purchaser must first offer the property to the government housing agency, or a low-or moderate-income purchaser designated by such agency, provided the option to purchase is exercised within 90 days after notice by the purchaser to the agency of intention to sell.

(*2*) If the property is resold within a time period as established by local law or ordinance after the purchaser acquires title, a governmental agency

may specify a maximum price which the veteran may receive for the property upon resale; or

(*3*) Such other restriction approved by the Secretary designed to insure either that a property acquired under such program again be made available to low- or moderate-income purchasers, or to prevent a private purchaser from obtaining a windfall profit on the resale of such property, while assuring that the purchaser has a reasonable opportunity to dispose of the property without undue difficulty at a reasonable price.

(*4*) The sale price of a property under any of the restrictions of paragraph (b)(5)(iv)(A) of this section shall not be less than the lowest of the following: The price designated by the owner as the asking price; the appraised value of the property; or the original purchase price of the property, increased by a factor reflecting all or a reasonable portion of the increased costs of housing or the percentage increase in median income in the area between the date of original purchase and resale, plus the reasonable value or actual costs of any capital improvements made by the owner plus a reasonable real estate commission less the cost of necessary repairs required to place the property in saleable condition; or other reasonable formula approved by the Secretary. The veteran must be fully informed and consent in writing to the housing restrictions. A copy of the veteran's consent statement must be forwarded with the application for home loan guaranty or the report of a home loan guaranty or the report of a home loan processed on the automatic basis.

(Authority: 38 U.S.C. 3703(c))

(B) A recorded restriction on title designed to provide housing for older persons, provided that the restriction is acceptable under the provisions of the Fair Housing Act, title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. 3601 et seq. The veteran must be fully informed and consent in writing to the restrictions. A copy of the veteran's consent statement must be forwarded with the application for home loan guaranty or the report of a home loan processed on the automatic basis.

(Authority: 38 U.S.C. 501, 3703(c)(1))

(6) Building and use restrictions whether or not enforceable by a reverter clause if there has been no breach of the conditions affording a right to an exercise of the reverter;

(7) Any other covenant, condition, restriction, or limitation approved by the Secretary in the particular case. Such approval shall be a condition precedent to the guaranty or insurance of the loan; *Provided*, That the limitations on the quantum or quality of the estate or property that are indicated in this paragraph, insofar as they may materially affect the value of the property for the purpose for which it is used, are taken into account in the appraisal of reasonable value required by 38 U.S.C. chapter 37.

(c) The following limitations on the quantum or quality of the estate or property shall be deemed for the purposes of paragraph (b) of this section to have been taken into account in the appraisal of residential property and determined by the Secretary as not materially affecting the reasonable value of such property:

(1) *Building or use restrictions. Provided:*

(i) No violation exists,

(ii) The proposed use by a veteran does not presage a violation of a condition affording a right of reverter, and

(iii) Any right of future modification contained in the building or use restrictions is not exercisable, by its own terms, until at least 10 years following the date of the loan.

(2) *Violations of racial and creed restrictions.* Violations of a restriction based on race, color, creed, or national origin, whether or not such restriction provides for reversion or forfeiture of title or a lien for liquidated damages in the event of a breach.

(3) *Violations of building or use restrictions of record.* Violations of building or use restrictions of record which have existed for more than 1 year, are not the subject of pending or threatened litigation, and which do not provide for a reversion or termination of title, or condemnation by municipal authorities, or, a lien for liquidated damages which may be superior to the lien of the guaranteed or insured mortgage.

(4) *Easements.* (i) Easements for public utilities along one or more of the property lines and easements for drainage or irrigation ditches, provided the exercise of the rights thereof do not interfere with the use of any of the buildings or improvements located on the subject property.

(ii) Mutual easements for joint driveways located partly on the subject property and partly on adjoining property, provided the agreement is recorded in the public records.

(iii) Easements for underground conduits which are in place and which do not extend under any buildings in the subject property.

(5) *Encroachments.* (i) On the subject property by improvements on the adjoining property where such encroachments do not exceed 1 foot within the subject boundaries, provided such encroachments do not touch any buildings or interfere with the use or enjoyment of any building or improvement on the subject property.

(ii) By hedges or removable fences belonging to subject or adjoining property.

(iii) Not exceeding 1 foot on adjoining property by driveways belonging to subject property, provided there exists a clearance of at least 8 feet between the buildings on the subject property and the property line affected by the encroachment.

(6) *Variations of lot lines.* Variations between the length of the subject property lines as shown on the plot plan or other exhibits submitted to Department of Veterans Affairs and as shown by the record or possession lines, provided such variations do not interfere with the current use of any of the improvements on the subject property and do not involve a deficiency of more than 2 percent with respect to the length of the front line or more than 5 percent with respect to the length of any other line.

(Authority: 38 U.S.C. 3703(c))

§ 36.4855 Loans, first, second, or unsecured.

Loans for the purchase of real property or a leasehold estate as limited in the regulations concerning guaranty or insurance of loans to veterans, or for the alteration, improvement, or repair thereof, and for more than $1,500 and more than 40 percent of the reasonable value of such property or estate prior thereto shall be secured by a first lien on the property or estate. Loans for such alteration, improvement, or repairs for more than $1,500 but 40 percent or less of the prior reasonable value of the property shall be secured by a lien reasonable and customary in the community for the type of alteration, improvement, or repair financed. Those for $1,500 or less need not be secured, and in lieu of the title examination the lender may accept a statement from the borrower that he or she has an interest in the property not less than that prescribed in § 36.4854(a).

(Authority 38 U.S.C. 3703(c)(1))

§ 36.4856 Tax, special assessment and other liens.

Tax liens, special assessment liens, and ground rents shall be disregarded with respect to any requirement that loans shall be secured by a lien of specified dignity. With the prior approval of the Secretary, Under Secretary for Benefits, or Director, Loan

Guaranty Service, liens retained by nongovernmental entities to secure assessments or charges for municipal type services and facilities clearly within the public purpose doctrine may be disregarded. In determining whether a loan for the purchase or construction of a home is secured by a first lien the Secretary may also disregard a superior lien created by a duly recorded covenant running with the realty in favor of a private entity to secure an obligation to such entity for the homeowner's share of the costs of the management, operation, or maintenance of property, services or programs within and for the benefit of the development or community in which the veteran's realty is located, if the Secretary determines that the interests of the veteran-borrower and of the Government will not be prejudiced by the operation of such covenant. In respect to any such superior lien to be created after June 6, 1969, the Secretary's determination must have been made prior to the recordation of the covenant.

(Authority: 38 U.S.C. 3703(d)(3))

§ 36.4857 Combination residential and business property.

If otherwise eligible, a loan for the purchase or construction of a combination of residential property and business property which the veteran proposes to occupy in part as a home will be eligible under 38 U.S.C. 3710, if the property is primarily for residential purposes and no more than one business unit is included in the property.

(Authority: 38 U.S.C. 3703(c)(1))

§ 36.4858 [Reserved]

§ 36.4859 Supplemental loans.

(a) Any loan for the alteration, repair, improvement, extension, replacement, or expansion of a home, with respect to which a guaranteed or insured obligation of the borrower is currently outstanding, may be reported for guaranty or insurance coverage, if such loan is made by the holder of the currently outstanding obligation, notwithstanding the fact no guaranty entitlement remains available to the borrower; *Provided*, that if no entitlement remains available the maximum amount payable on the revised guaranty shall not exceed the amount payable on the original guaranty on the date of closing the supplemental loan, and the percentage of guaranty shall be based upon the proportion the said maximum amount bears to the aggregate indebtedness, or, in the case of an insured loan, no additional credit to the holder's insurance account may be made: *Provided* further, that the prior approval of the Secretary shall be required if:

(1) The loan will be made by a lender who is not the holder of the currently guaranteed or insured obligation; or

(2) The loan will be made by a lender not of a class specified in 38 U.S.C. 3702(d); or

(3) An obligor liable on the currently outstanding obligation will be released from personal liability.

(b) In any case in which the unpaid balance of the prior loan currently outstanding is combined or consolidated with the amount of the supplemental loan, the entire aggregate indebtedness shall be repayable in full within the maximum maturity currently prescribed by statute for the original loan. No supplemental loan for the repair, alteration, or improvement of residential property will be eligible for guaranty or insurance unless such repair, alteration, or improvement substantially protects or improves the basic livability or utility of the property involved.

(c) Such loans shall be secured as required in § 36.4855: *Provided*, that a lien of lesser dignity than therein specified will suffice if the lien obtained is immediately junior to the lien of the original guaranteed or insured obligation: *Provided further*, that the liens of successive supplemental loans may be of lesser dignity so long as they are immediately junior to the lien of the last previous guaranteed or insured obligation having a lien of required dignity.

(d) Upon providing or extending guaranty or insurance coverage in respect to any such supplemental loan, the rights of the Secretary to the proceeds of the sale of security shall be subordinate to the right of the holder to satisfy therefrom the indebtedness outstanding on the original and supplemental loans.

(Authority: 38 U.S.C. 3703(c)(1), 3710(b)(6))

§ 36.4860 Condominium loans—general.

(a) *Authority—applicability of other loan guaranty regulations, 38 CFR Part 36.* A loan to an eligible veteran to purchase a one-family residential unit in a condominium housing development or project shall be eligible for guaranty or insurance to the same extent and on the same terms as other loans under 38 U.S.C. 3710 provided the loan conforms to the provisions of chapter 37, title 38 U.S.C., except for sections 3711 (direct loans), and 3727 (structural defects). The loan must also conform to the otherwise applicable provisions of the regulations concerning the guaranty or insurance of loans to veterans. Sections 36.4857, 36.4859, and 36.4869 shall not be applicable.

(b) *Definitions.* On and after July 1, 1979, the following definitions shall be applicable to each condominium loan entitled to be guaranteed or insured, and shall be applicable to such loans previously guaranteed or insured to the extent that no legal rights vested thereunder are impaired. Whenever used in 38 U.S.C. chapter 37 or this subpart, unless the context otherwise requires, the terms defined in this paragraph shall have the meaning stated.

(1) *Affiliate of declarant.* Affiliate of declarant means any person or entity which controls, is controlled by, or is under common control with, a declarant.

(i) A person or entity shall be considered to control a declarant if that person or entity is a general partner, officer, director, or employee of the declarant who:

(A) Directly or indirectly or acting in concert with one or more persons, or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 20 percent of the voting shares of the declarant;

(B) Controls in any manner the election of a majority of the directors of the declarant; or

(C) Has contributed more than 20 percent of the capital of the declarant.

(ii) A person or entity shall be considered to be controlled by a declarant if the declarant is a general partner, officer, director, or employee of that person or entity who:

(A) Directly or indirectly or acting in concert with one or more persons or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 20 percent of the voting shares of that person or entity;

(B) Controls in any manner the election of a majority of the directors of that person or entity; or

(C) Has contributed more than 20 percent of the capital of that person or entity.

(2) *Condominium.* Unless otherwise provided by State law, a condominium is a form of ownership in which the buyer receives title to a three dimensional air space containing the individual living unit together with an undivided interest or share in the ownership of common elements (restatement of § 36.4801, Condominium).

(3) *Conversion condominium.* Condominium projects not originally built and sold as condominiums but

subsequently converted to the condominium form of ownership.

(4) *Declarant.* Any person who has executed a declaration or an amendment to a declaration to add additional real estate to the project or any successors or assigns of the declarant who offers to sell or sells units in the condominium project and who assumes declarant rights in the project including the right to: Add, convert or withdraw real estate from the condominium project; maintain sales offices, management offices and rental units; exercise easements through the common elements for the purpose of making improvements within the condominium; or exercise control of the owner's association. Declarant is further defined as any sponsor of a project or affiliate of the declarant who is acting on behalf of or exercising the rights of the declarant.

(5) *Existing—declarant in control or marketing units.* A condominium in which all onsite or offsite improvements were completed or the conversion was completed prior to appraisal by the Department of Veterans Affairs, but the declarant is in control of the owners' association and/or is currently marketing units for initial transfer to individual unit owners.

(6) *Existing—resale.* A condominium in which all onsite or offsite improvements were completed, or the conversion was completed prior to appraisal by the Department of Veterans Affairs, and the declarant is no longer in control of the owners' association and/or marketing units for initial transfer to individual unit owners.

(7) *Expandable condominium.* A project which may be increased in size by the declarant. An expandable condominium is constructed in phases (or stages). After each phase is completed and constituted, the common estates are merged. Each unit owner, thereby, gains an individual interest in all of the facilities of the common estate.

(8) *Foreclosure.* Foreclosure shall mean the termination of a lien by either judicial or nonjudicial procedures in accordance with local law or the voluntary transfer of property by a deed-in-lieu of foreclosure or similar procedures.

(9) *High rise condominium.* A condominium project which is a multi-story elevator building.

(10) *Horizontal condominium.* A condominium project in which generally no part of a living unit extends over or under another living unit.

(11) *Low rise condominium.* A condominium project in which all or a part of a living unit extends over or under another living unit, e.g., garden apartment or walk-up project.

(12) *Proposed condominium.* A condominium project that is to be constructed or is under construction. In the case of a condominium conversion, the declarant proposes to convert a building or buildings to the condominium form of ownership, or the declarant is in the process of converting the building or buildings to the condominium form of ownership.

(13) *Series condominium.* A number of adjoining but separately constituted condominiums. An association of owners is established for each project, and each association is responsible for maintenance and upkeep of the common elements in its own project. Cross-easements between the separate condominiums may be created to permit members of the separate condominiums to use the common areas of the other condominiums.

(c) *Project approval.* Prior to Department of Veterans Affairs guaranty of an individual unit loan in a condominium, the legal documentation establishing the condominium project or development must be approved by the Secretary.

(Authority: 38 U.S.C. 3703(c)(1), (d)(3), 3710(a)(6))

§ 36.4861 Acceptable ownership arrangements and documentation.

(a) *Types of condominium ownership.* The following types of basic ownership arrangements are generally acceptable provided they are established in compliance with the applicable condominium law of the jurisdiction(s) in which the condominium is located:

(1) Ownership of units by individual owners coupled with an undivided interest in all common elements.

(2) Ownership of units by individual owners coupled with an undivided interest in general common elements and specified limited common elements.

(3) Individual ownership of units coupled with an undivided interest in the general common elements and/or limited common elements, with title to additional property for common use vested in an association of unit owners, with mandatory membership by unit owners or owners' associations. Any such arrangement must not be precluded by applicable State law.

(Authority: 38 U.S.C. 3710(a)(6))

(b) *Estate of unit owner.* The legal estate of each unit owner must comply with the provisions of § 36.4854. The declaration or equivalent document shall allocate an undivided interest in the common elements to each unit. Such interest may be allocated equally to each unit, may be proportionate to that unit's relative size or value, or may be allocated according to any other specified criteria provided that the method chosen is equitable and reasonable for that condominium.

(Authority: 38 U.S.C. 3703(c)(1), (d)(3), 3710(a)(6))

(c) *Condominium documentation*—(1) *Compliance with applicable law.* The declaration, bylaws and other enabling documentation shall conform to the laws governing the establishment and maintenance of condominium regimes within the jurisdiction in which the condominium is located, and to all other laws which apply to the condominium.

(2) *Recordation.* The declaration and all amendments or modifications thereof shall be placed of record in the manner prescribed by the appropriate jurisdiction. If recording of plats, plans, or bylaws or equivalent documents and all amendments or modifications thereof is the prevailing practice or is required by law within the jurisdiction where the project is located, then such documents shall be placed of record. If the bylaws are not recorded, then covenants, restrictions and other matters requiring record notice should be contained in the declaration or equivalent document.

(3) *Availability.* The owner's association shall be required to make available to unit owners, lenders and the holders, insurers and guarantors of the first mortgage on any unit, current copies of the declaration, bylaws and other rules governing the condominium, and other books, records and financial statements of the owners' association. The owners' association also shall be required to make available to prospective purchasers current copies of the declaration, bylaws, other rules governing the condominium, and the most recent annual audited financial statement, if such is prepared. ''Available'' as used in this paragraph (c)(3) shall at least mean available for inspection, upon request, during normal business hours or under other reasonable circumstances.

(4) *Amendments to documents after Department of Veterans Affairs project approval.* While the declarant is in control of the owners' association, amendments to the declaration, bylaws or other enabling documentation must be approved by the Secretary. The declarant should have proposed amendments reviewed prior to recordation. This provision does not apply to amendments which annex additional phases to the condominium regime in accordance with a general

plan of development (§§ 36.4864(a)(3) and 36.4865(b)(6)).

(Authority: 38 U.S.C. 3703(c)(1), 3710(a)(6))

(d) *Real property descriptions in the declaration*—(1) *Clarity—conformity with the law of the jurisdiction.* The description of the units, common elements, any recreational facilities and other related amenities, and any limited common elements shall be clear and in conformity with the law of the jurisdiction where the project is located. Responsibility for maintenance and repair of all portions of the condominium shall be set forth clearly.

(2) *Developmental plan—proposed condominiums.* The declaration or other legally enforceable and binding document must state in a reasonable manner the overall development plan of the condominium, including building types, architectural style and the size of the units for those phases of the condominium which are required to be built. Under the applicable provisions of the declaration or such other legally enforceable and binding document, the development of the required portion of the condominium must be consistent with the overall plan, except that the declarant may reserve the right to change the overall plan or decide not to construct planned units or improvements to the common elements if the declaration sets forth the conditions required to be satisfied prior to the exercise of that right the time within which the right may be exercised, and any other limitations and criteria that would be necessary or appropriate under the particular circumstances. Such conditions, time restraints and other limitations must be reasonable in light of the overall plan for the condominium. In an expandable project, additional phases which are not required to be built may be described in the development plan in very general terms, or the declaration may provide that the declarant makes no assurances concerning the construction, building types, architectural style and size of the units, etc. of these phases. However, the minimum number of units to be built should be that which would be adequate to reasonably support the common elements. (See § 36.4864(a)(6).)

(Authority: 38 U.S.C. 3703(c)(1), 3710(a)(6))

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0448.)

§ 36.4862 Rights and restrictions.

(a) *Declarant's rights and restrictions*—(1) *Disclosure and reasonableness of reserved rights.* Any right reserved by the declarant must be reasonable and set forth in the declaration.

(2) *Examples of reserved rights of declarant, sponsor, or affiliate of declarant which are usually unacceptable.* Binding the owners' association either directly or indirectly to any of the following agreements is not acceptable unless the owners' association shall have a right of termination thereof which is exercisable without penalty at any time after transfer of control, upon not more than 90 days' notice to the other party thereto:

(i) Any management contract, employment contract or lease of recreational or parking areas or facilities.

(ii) Any contract or lease, including franchises and licenses, to which a declarant is a party.

(iii) The requirements of paragraphs (a)(2)(i) and (ii) of this section do not apply to acceptable ground leases.

(3) *Examples of reserved rights which are usually acceptable.* The following rights in the common elements may usually be reserved by the declarant for a reasonable period of time, subject to a concomitant obligation to restore:

(i) Easement over and upon the common elements and upon lands appurtenant to the condominium for the purpose of completing improvements for which provision is made in the declaration, but only if access thereto is otherwise not reasonably available.

(ii) Easement over and upon the common elements for the purpose of making repairs required pursuant to the declaration or contracts of sale made with unit purchasers.

(iii) Right to maintain facilities in the common areas which are identified in the declaration and which are reasonably necessary to market the units. These may include sales and management offices, model units, parking areas, and advertising signs.

(Authority: 38 U.S.C. 3704(c)(1), 3710(a)(6))

(b) *Owners' association's rights and restrictions*—(1) *Right of entry upon units and limited common elements.* The owners' association shall be granted a right of entry upon unit premises and any limited common elements to effect emergency repairs, and a reasonable right of entry thereupon to effect other repairs, improvements, replacement or maintenance as necessary.

(2) *Power to grant rights and restrictions in common elements.* The owners' association should be granted other rights, such as the right to grant utility easements under, through or over the common elements, which are reasonably necessary to the ongoing development and operation of the project.

(3) *Responsibility for damage to common elements and units.* A provision may be made in the declaration or bylaws for allocation of responsibility for damages resulting from the exercise of any of the above rights.

(4) *Assessments*—(i) *Levy and collection.* The declaration or its equivalent shall describe the authority of the owners' association to levy and enforce the collection of general and special assessments for common expenses and shall describe adequate remedies for failure to pay such common expenses. The common expenses assessed against any unit, with interest, late charges, costs and a reasonable attorney's fee shall be a lien upon such unit in accordance with applicable law. Each such assessment, together with interest, late charges, costs, and attorney's fee, shall also be the personal obligation of the person who was the owner of such unit at the time the assessment fell due. The personal obligation for delinquent assessments shall not pass to successors in title or interest unless assumed by them, or required by applicable law. Common expenses as used in this subdivision shall mean expenditures made or liabilities incurred by or on behalf of the owners' association, together with any assessments for the creation and maintenance of reserves.

(ii) *Reserves and working capital.* There shall be in new or proposed condominium projects (including conversions) a provision for an adequate reserve fund for the periodic maintenance, repair and replacement of the common elements, which fund shall be maintained out of regular assessments for common expenses. Additionally, a working capital fund must be established for the initial months of the project operations equal to at least a 2 months' estimated common area charge for each unit.

(iii) *Priority of lien.* Any assessment lien must be subordinate to any Department of Veterans Affairs guaranteed mortgage except as provided in § 36.4856. A lien for common expense charges and assessments shall not be affected by any sale or transfer of a unit except that a sale or transfer pursuant to a foreclosure of a first mortgage shall extinguish a subordinate lien for common expense charges and assessments which became payable prior to such sale or transfer. Any such sale or transfer pursuant to a foreclosure shall not relieve the purchaser or transferee of a unit from liability for, nor the unit so sold or transferred from the

lien of, any common expense charges thereafter becoming due.

(Authority: 38 U.S.C. 3703(c)(1), (d)(3), 3710(a)(6))

(c) *Unit owners' rights and restrictions*—(1) *Obligation to pay expenses.* The declaration or equivalent document shall establish a duty on each unit owner, including the declarant, to pay a proportionate share of common expenses upon being assessed therefor by the owners' association. Such share may be allocated equally to each unit, may be proportionate to that unit's common element interest, relative size or value, or may be allocated according to any other specified criteria provided that the method chosen is equitable and reasonable for that condominium.

(2) *Voting rights.* The declaration or equivalent document shall allocate a portion of the votes in the association to each unit. Such portion may be allocated equally to each unit, may be proportionate to that unit's common expense liability, common element interest, relative size or value, or may be allocated according to any other specified criteria provided that the method is equitable and reasonable for that condominium. The declaration may provide different criteria for allocations of votes to the units on particular specified matters and may also provide different percentages of required unit owner approvals for such particular specified matters.

(3) *Ingress and egress of unit owners.* There may not be any restriction upon any unit owner's right of ingress and egress to his or her unit.

(4) *Encroachments*—(i) *Easements for encroachments.* In the event any portion of the common elements encroaches upon any unit or any unit encroaches upon the common elements or another unit as a result of the construction, reconstruction, repair, shifting, settlement, or movement of any portion of the improvements, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists. The declaration may provide, however, reasonable limits on the extent of any easement created by the overlap of units, common elements, and limited common elements resulting from such encroachments; or

(ii) *Monuments as boundaries.* If permitted by the governing law within the jurisdiction where the project is located, the existing physical boundaries of a unit or a common element or the physical boundaries of a unit or a common element reconstructed in substantial accordance with the original plats and plans thereof become its boundaries rather than the metes and bounds expressed in the deed, plat or plan, regardless of settling or lateral movement of the building, or minor variance between boundaries shown on the plats, plans or in the deed and those of the building. The declaration should provide reasonable limits on the extent of any such revised boundary(ies) created by the overlap of units, common elements, and limited common elements resulting from such encroachments.

(5) *Right of first refusal.* The right of a unit owner to sell, transfer, or otherwise convey his or her unit in a condominium shall not be subject to any right of first refusal or similar restriction if the declaration or similar document is recorded on or after December 1, 1976. If the declaration was recorded prior to December 1, 1976, the right of first refusal must comply with § 36.4854(b)(5)(ii); Provided, however, restrictions on the basis of age or restrictions established by a State, Territorial, or local government agency as part of a program for providing assistance to low- and moderate-income purchasers shall be governed by § 36.4854(b)(5)(iv).

(Authority: 38 U.S.C. 3703(c))

(6) *Leasing restrictions.* Except as provided in this paragraph, there shall be no prohibition or restriction on a condominium unit owner's right to lease his or her unit. The following restrictions are acceptable:

(i) A requirement that leases have a minimum initial term of up to 1 year; or

(ii) Age restrictions or restrictions imposed by State or local housing authorities which are allowable under § 36.4809(e) or § 36.4854(b)(5)(iv).

(d) *Rights of action.* The owners' association and any aggrieved unit owner should be granted a right of action against unit owners for failure to comply with the provisions of the declaration, bylaws, or equivalent documents, or with decisions of the owners' association which are made pursuant to authority granted the owners' association in such documents. Unit owners should have similar rights of action against the owners' association.

(Authority: 38 U.S.C. 3703(c)(1), 3710(a)(6))

§ 36.4863 Miscellaneous legal requirements.

(a) *Declarant transfer of control of owners' association*—(1) *Standards for transfer of control.* The declarant shall relinquish all special rights, expressed or implied, through which the declarant may directly or indirectly control, direct, modify, or veto any action of the owners' association, its executive board, or a majority of unit owners, and control of the owners' association shall pass to the owners of units within the project, not later than the earlier of the following:

(i) 120 days after the date by which 75 percent of the units have been conveyed to unit purchasers,

(ii) The last date of a specified period of time following the first conveyance to a unit purchaser; such period of time is to be reasonable for the particular project. The maximum acceptable period usually will be from 3 to 5 years for single-phased condominium regimes and 5 to 7 years for expandable condominiums, or

(iii) On a case basis, modifications or variations of the requirements of paragraphs (a)(1)(i) and (ii) of this section will be acceptable, particularly in circumstances involving very large condominium developments.

(2) *Declarant's unit votes after transfer of control.* The requirements of paragraph (a)(1) of this section shall not affect the declarant's rights, as a unit owner, to exercise the votes allocated to units which the declarant owns.

(3) *Unit owners' participation in management.* Declarant should provide for and foster early participation of unit owners in the management of the project.

(b) *Taxes.* Unless otherwise provided by State law, real estate taxes must be assessed and be lienable only against the individual units, together with their undivided interests in the common elements, and not against the multifamily structure. The owners' association usually owns no real estate, so it has no obligation concerning ad valorem taxes. Unless taxes are assessed only against the individual units, a tax lien could amount to more than the value of any particular unit in the structure.

(c) *[Reserved]*

(d) *Policies for bylaws.* The bylaws of the condominium should be sufficiently detailed for the successful governance of the condominium by unit owners. Among other things, such documents should contain adequate provisions for the election and removal of directors and officers.

(e) *Insurance and related requirements*—(1) *Insurance.* The holder shall require hazard and flood insurance policies to be procured and maintained in accordance with § 36.4829. Because of the nature of condominiums, additional types of insurance coverages—such as tort liability insurance for injuries sustained on the premises, personal liability insurance for directors and officers

managing association affairs, boiler insurance, etc.—should be considered in appropriate circumstances.

(2) *Fidelity bond coverage.* The securing of appropriate fidelity bond coverage is recommended but not required, for any person or entity handling funds of the owners' association, including, but not limited to, employees of the professional managers. Such fidelity bonds should name the association as an obligee, and be written in an amount equal to at least the estimated maximum of funds, including reserve funds, in the custody of the owners' association or the management agent at any given time during the term of the fidelity bond. However, the bond should not be less than a sum equal to 3 months' aggregate assessments on all units plus reserve funds.

(Authority: 38 U.S.C. 3703(c)(1), 3710(a)(6))

§ 36.4864 Documentation and related requirements—flexible condominiums and condominiums with offsite facilities.

(a) *Expandable condominiums.* The following policies apply to condominium regimes which may be increased in size by the declarant:

(1) The declarant's right to expand the regime must be fully described in the declaration. The declaration must contain provisions adequate to ensure that future improvements to the condominium will be consistent with initial improvements in terms of quality of construction. The declarant must build each phase in accordance with an approved general plan for the total development (§ 36.4861(d)(2)) supported by detailed plats and plans of each phase prior to the construction of the particular phase.

(2) The reservation of a right to expand the condominium regime, the method of expansion and the result of an expansion must not affect the statutory validity of the condominium regime or the validity of title to the units.

(3) The declaration or equivalent document must contain a covenant that the condominium regime may not be amended or merged with a successor condominium regime without prior written approval of the Secretary. The declarant may have the proposed legal documentation to accomplish the merger reviewed prior to recordation. However, the Secretary's final approval of the merger will not be granted until the successor condominium has been legally established and construction completed. The declarant may add phases to an expandable condominium regime without the prior approval of the Secretary if the phasing implements a previously approved general plan for the total development. A copy of the amendment to the declaration or other annexation document which adds each phase must be submitted to the Secretary in accordance with § 36.4865(b)(6).

(4) Liens arising in connection with the declarant's ownership of, and construction of improvements upon, the property to be added must not adversely affect the rights of existing unit owners, or the priority of first mortgages on units in the existing condominium property. All taxes, assessments, mechanic's liens, and other charges affecting such property, covering any period prior to the addition of the property, must be paid or otherwise satisfactorily provided for by the declarant.

(5) The declarant must purchase (at declarant's own expense) a general liability insurance policy in an amount not less than $1 million for each occurrence, to cover any liability which owners of previously sold units are exposed to as a result of further condominium project development.

(6) Each expandable project shall have a specified maximum number of units which will give each unit owner a minimum percentage of interest in the common elements. Each project shall also have a specified minimum number of units which will give each unit owner a maximum percentage of interest in the common elements. The minimum number of units to be built should be that which would be adequate to reasonably support the common elements. The maximum number of units to be built should be that which would not overload the capacity of the common facilities. The maximum possible percentage(s) and the minimum possible percentage(s) of undivided interest in the common elements for each type of unit must be stated in the declaration or equivalent document.

(7) The declaration or equivalent document shall set forth clearly the basis for reallocation of unit owner's ownership interests, common expense liabilities and voting rights in the event the number of units in the condominium is increased. Such reallocation shall be according to the applicable criteria set forth in §§ 36.4861(b) and 36.4862(c)(1) and (2).

(8) The declarant's right to expand the condominium must be for a reasonable period of time with a specific ending date. The maximum acceptable period will usually be from 5 to 7 years after the date of recording the declaration. On a case basic, longer periods of expansion rights will be acceptable, particularly in circumstances involving sizable condominium developments.

(b) *Series projects.* (1) Each phase in the series approach is to be considered as a separate project. A separate set of legal documents must be filed for each phase or project that relates to the condominium within its own boundary. The declaration for each phase must describe the particular project as a part of the whole development area, but subject only the one phase to the condominium regime. A separate unit ratio must be established that would relate each unit to all units of the particular condominium for purposes of ownership in the common areas, voting rights and assessment liability. A separate association may be created to govern the affairs of each condominium. Each phase is subject to a separate presale requirement.

(2) In the case of proposed projects, or projects under construction, the declaration should state the number of total units that the developer intends to build on other sections of the development area.

(c) *Other flexible condominiums.* Condominiums containing withdrawable real estate (contractable condominiums) and condominiums containing convertible real estate (portions of the condominium within which additional units or limited common elements, or both, may be created) will be considered acceptable provided the flexible condominium complies with the § 36.4800 series.

(Authority: 38 U.S.C. 3703(c)(1), 3710(a)(6))

(The Office of Management and Budget has approved the information collection requirements of this section under control number 2900–0448.)

§ 36.4865 Appraisal requirements.

(a) *Existing resale condominiums.* Upon acceptance by the local office of the organizational documents, the project and unit(s) proposed as security for guaranteed financing shall be appraised to ensure that they meet MPRs (Minimum Property Requirements) and are safe, sanitary, and structurally sound. The Department of Veterans Affairs MPRs for existing construction apply to all existing resale condominiums including conversions, except that water, heating, ventilating, air conditioning and sewer service may be supplied from a central source.

(Authority: 38 U.S.C. 3703(c)(1), 3710(a)(6), (b)(5))

(b) *Proposed condominiums or existing condominiums with declarant in control or marketing units*—(1) *Low rise and high rise condominiums.* Low rise and high rise condominiums shall comply with local building codes. Only the alterations, improvements, or repairs to low rise and high rise buildings

proposed to be converted to the condominium form of ownership must comply with current local building codes, unless local authorities require total code compliance on the entire structure when a building is being converted to the condominium form of ownership. In those areas where local standards are nonexistent, inferior to, or in conflict with Department of Veterans Affairs objectives, a certification will be required from a registered professional architect and/or registered engineer certifying that the plans and specifications conform to one of the national building codes which is typical of similar construction methods and standards for condominiums used in the area. Those portions of the condominium conversion which are not being altered, improved or repaired must be appraised in accordance with paragraph (a) of this section.

(2) *Horizontal condominiums.* Department of Veterans Affairs policies and procedures applicable to single-family residential construction shall also apply to horizontal condominiums. Proposed or existing (declarant in control or marketing units) horizontal condominium conversions shall comply with current local building codes for alterations and improvements or repairs made to convert the building to the condominium form of ownership unless local authorities require total code compliance on the entire structure when a building is being converted to the condominium form of ownership. In those areas where local standards are nonexistent, inferior to, or in conflict with Department of Veterans Affairs objectives, a certification will be required from a professional architect and/or registered engineer certifying that the plans and specifications conform to one of the national building codes which is typical of similar construction methods and standards for condominiums used in the area. Those portions of the condominium conversion which are not being altered, improved or repaired must be appraised in accordance with paragraph (a) of this section.

(Authority: 38 U.S.C. 3703(c)(1))

(3) *Unit completion.* All units in the individual project or phase must be substantially completed except for customer preference items, such as interior finishes, appliances or equipment.

(4) *Common element completion.* All amenities of the condominium (to include offsite community facilities), that are to be considered in the unit value, must be bound legally to the condominium regime. All such amenities as well as the common elements of the project, must be substantially completed and available for use by the unit owners. In large multi-phase projects, the declarant should construct common elements in a manner consistent with the addition of units to support the entire development. The Secretary, in appropriate cases, may approve the placement of adequate funds by the declarant in an escrow or otherwise earmarked account or accept a letter of credit or surety bond to assure completion of amenities and allow closing of VA-guaranteed (or insured) loans. Such funds must be adequate to assure completion of the amenities free and clear of all liens.

(Authority: 38 U.S.C. 3703(c)(1), 3710(a)(6))

(5) *Information brochure/public offering statement.* When units are being sold by the declarant (not applicable to resales), an information brochure/public offering statement must be given to veteran buyers prior to the time a down payment is received and an agreement is signed, unless State law authorized receipt of the down payment and delivery of the information brochure followed by a period in which purchasers may cancel the purchase agreement without penalty for a specified number of days. Information brochures must be written in simple terms to inform buyers that the association does not provide owner's contents and personal liability policies which are the owner's responsibility. In the event the development is expandable, series, etc., there must be full disclosure of the impact of the total development plan. In expandable, series or other projects with more than one phase, the information brochure must disclose fully later development rights, and the general plans of the declarant for additional phases. If the declarant makes no assurance concerning phases which are not required to be built, the declarant should state that no assurances are given concerning construction, unit sizes, building types, architectural styles, etc. In condominium conversions, the information brochure must list the major structural and mechanical components and the estimated remaining useful life of the components. A brief explanation must be furnished in the brochure explaining that certain major structural or mechanical components may require replacement within a specified time period. If the declarant has elected to place funds into a condominium reserve fund for replacement of a major component under the provisions of § 36.4865(b)(7), the amount of the contribution into the reserve fund must be specified in the information brochure.

(6) *Evidence of proper phasing.* In an expandable or flexible condominium, evidence of the addition of each phase in accordance with a previously approved general plan of development must be submitted to the Secretary prior to the guaranty of the first loan in the added area.

(7) *Additional condominium conversion requirements.* (i) The declarant of any condominium project must furnish structural and mechanical common element component statements on the present condition of all accessible structural and mechanical components material to the use and enjoyment of the condominium. These statements must be completed by a registered professional engineer and/or architect prior to the guaranty of the first unit loan in the project. Each statement must also give an estimate of the expected useful life of the roof, elevators, heating and cooling, plumbing and electrical systems assuming normal maintenance. A minimum of 10 years estimated remaining useful life is required on all structural and mechanical components. In the alternative, the declarant may contribute an amount of funds to the condominium reserve fund equal to a minimum of 1/10 (one-tenth) of the estimated costs of replacement of a major structural or mechanical component (as determined by an independent registered professional architect or engineer) for each year of estimated remaining useful life less than 10 years, e.g. 7 years remaining useful life equals a 3/10 required declarant contribution to the reserve fund of the component's estimated replacement cost. The noted statements and remaining useful life requirement are not applicable to existing resale conversion projects when the declarant is no longer marketing units and/or in control of the association. Expandable or series condominium conversions require engineering and architectural statements on each stage or phase.

(ii) In declarant controlled projects, a statement(s) by the local authority(ies) of the adequacy of offsite utilities servicing the site (e.g., sanitary or water) is required. If a local authority(ies) declines to issue such a statement(s), a statement(s) may be obtained from a registered professional engineer. If local authority(ies) declines to issue such a statement(s), a statement(s) may be obtained from a registered professional engineer.

(c) *Presale requirements:*

(1) *Proposed construction or existing declarant in control.* Bona fide

agreements of sale must have been executed by purchasers other than the declarant (who are obligated contractually to complete the purchase) of 70 percent of the total number of units in the project. Lenders shall certify as to satisfaction of the presale requirement prior to VA guaranty of the first unit loan. When a declarant can demonstrate that a lower percentage would be justified, the Secretary, on an individual case basis, may approve a presale requirement of less than 70 percent. Reduction of the 70 percent presale requirement will be considered when:

(i) Strong initial sales demonstrate a ready market, or

(ii) The declarant will provide cash assets or acceptable bonds for payment of full common area assessments to the owners' association until such assessments are assumed by unit purchasers, or

(iii) Subsequent phases of an overall development are being undertaken in a proven market area, or

(iv) Previous experience in similar projects in the same market area indicates strong market acceptance, or

(v) The development is in a market area that has repeatedly indicated acceptance of such projects.

(2) *Multiphase—proposed or existing declarant in control.* The requirements of paragraph (c)(1) of this section shall apply to each individual phase of a multiphase development, taking into consideration that each individual phase must be capable of self-support in the event that the developer does not complete all planned phases.

(d) *Warranty.* Except in condominium conversion projects, each CRV (Certificate of Reasonable Value) issued by the Secretary relating to a proposed or existing not previously occupied dwelling unit in a condominium project shall be subject to the express condition that the builder, seller, or the real party in interest in the transaction shall deliver to the veteran purchasing the dwelling unit with the aid of a guaranteed or insured loan a warranty against defects for the unit and common elements. The unit shall be warranted for 1 year from the date of settlement or the date of occupancy (whichever first occurs). The common elements shall be warranted for 2 years from the date each of the common elements is completed and available for use by the unit owners, or 2 years from the date the first unit is conveyed to a unit owner other than the declarant, whichever is later, in the particular phase of the condominium containing the common element. For these purposes, defects shall be those items reasonably requiring the repair, renovation, restoration, or replacement of any of the components constituting the unit or common elements. Items of maintenance relating to the unit or common elements are not covered by the warranty. No certificate of guaranty or insurance credit shall be issued unless a copy of such warranty, duly receipted by the purchaser, is submitted with the loan papers.

(e) *Ownership and operation of offsite facilities*—(1) *Title requirements.* Evidence must be presented that the offsite facility owned by an owners' association with mandatory membership by condominium unit owners or condominium unit owners' associations has been completed and conveyed free of encumbrances by the declarant for the benefit of the unit owners with title insured by an owner's title policy or other acceptable title evidence. Offsite facilities conveyed to a nonprofit corporation are the preferred method of offsite facilities ownership; however, the Secretary will consider other forms of ownership on an individual case basis.

(2) *Mandatory membership.* The declaration of the condominium (each condominium in a series development) and the legal documentation of the corporation or association which owns the offsite facility must provide the following:

(i) The owner of a condominium unit is automatically a member of the offsite facility corporation or association and that upon the sale of the unit, membership is transferred automatically to the new owner/purchaser. It is also acceptable if each condominium owners' association (in lieu of each individual unit owner) is automatically a member of the offsite facility corporation or association coupled with use rights for each of the unit owners or residents. If membership in an offsite owners' association is voluntary, no credit in the CRV valuation may be given for such offsite amenities.

(ii) Each member of the offsite facility corporation or association must be entitled to a representative vote at meetings of the offsite facility corporation or association. If the individual condominium owners' association is a member of the offsite facility corporation or association, each condominium owners' association must be entitled to a representative vote at meetings of the offsite facility corporation or association.

(iii) Each member must agree by acceptance of the unit deed to pay a share of the expenses of the offsite facility corporation or association as assessed by the corporation or association for upkeep, insurance, reserve fund for replacements, maintenance and operation of the offsite facility. The share of said expenses shall be determined equitably. Failure to pay such assessment must result in a lien against the individual unit in the same manner as unpaid assessments by the association of owners of the condominium. If each condominium owners' association is a member of the offsite facility in lieu of individual unit owners, failure of the condominium owners' association to pay its equitable assessment to the offsite facility must result in an enforceable lien.

(3) *Declarant payment of offsite facility in a series project.* Until the declarant has completed all of the intended condominium phases in a total condominium development or established each condominium regime by filing a separate declaration in a series development, the balance of the total sum of the expenses of the offsite facility not covered by the assessment against the unit owners should be assessed against and be payable by the declarant commencing on the first day of the first month after the first unit is conveyed to a homeowner in the first phase. If this balance is not paid, it must become a lien against those parcels of land in the development area which are owned by the declarant. The collection of such debt and enforcement of such lien may be by foreclosure or such other remedies afforded the corporation or association under local law.

(f) *Professional management.* Many condominiums are small enough and their common areas so minimal that professional management is not necessary. VA does not have a requirement for professional management of condominiums. The powers given to the owners' association by the declaration and bylaws are fundamentally for ''use control'' and maintenance of the undivided interest all of the owners have in the common areas. These powers normally include management which may, if desired, be delegated to a professional manager. However, if the board of directors wants professional management, the management agreement must be terminable for cause upon 30 days' notice, and run for a reasonable period of from 1 to 3 years and be renewable for consent of the association and the management. (Management contracts negotiated by the declarant should not exceed 2 years.)

(g) *Commercial areas.* With respect to existing and proposed condominiums, commercial areas within condominium developments are acceptable, but such interests will be considered in value.

(Authority: 38 U.S.C. 3703(c)(2), 3710(a)(6))

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0448.)

§ 36.4867 Requirement of construction warranty.

Each certificate of reasonable value issued by the Secretary relating to a proposed or newly constructed dwelling unit, except those covering one-family residential units in condominium housing developments or projects within the purview of §§ 36.4860 through 36.4865, shall be subject to the express condition that the builder, seller, or the real party in interest in the transaction shall deliver to the veteran constructing or purchasing such dwelling with the aid of a guaranteed or insured loan a warranty, in the form prescribed by the Secretary, that the property has been completed in substantial conformity with the plans and specifications upon which the Secretary based the valuation of the property, including any modifications thereof, or changes or variations therein, approved in writing by the Secretary, and no certificate of guaranty or insurance credit shall be issued unless a copy of such warranty duly receipted by the purchaser is submitted with the loan papers.

(Authority: 38 U.S.C. 3703(c)(1), 3705)

§ 36.4868 Nondiscrimination and equal opportunity in housing certification requirements.

(a) Any request for a master certificate of reasonable value on proposed or existing construction, and any request for appraisal of individual existing housing not previously occupied, which is received on or after November 21, 1962, will not be assigned for appraisal prior to receipt of a certification from the builder, sponsor or other seller, in the form prescribed by the Secretary, that neither it nor anyone authorized to act for it will decline to sell any property included in such request to a prospective purchaser because of his or her race, color, religion, sex or national origin.

(b) On requests for appraisal of individual proposed construction received on or after November 21, 1962, the prescribed nondiscrimination certification will be required if the builder is to sell the veteran the lot on which the dwelling is to be constructed, but will not be required if:

(1) The veteran owns the lot; or

(2) The lot is being acquired by the veteran from a seller other than the builder and there is no identity of interest between the builder and the seller of the lot.

(c) Each builder, sponsor or other seller requesting approval of site and subdivision planning shall be required to furnish a certification, in the form prescribed by the Secretary, that neither it nor anyone authorized to act for it will decline to sell any property included in such request to a prospective purchaser because of his or her race, color, religion, sex or national origin. Site and subdivision analysis will not be commenced by the Department of Veterans Affairs prior to receipt of such certification.

(d) No commitment shall be issued and no loan shall be guaranteed or insured under 38 U.S.C. chapter 37 unless the veteran certifies, in such form as the Secretary shall prescribe, that

(1) Neither he/she, nor anyone authorized to act for him/her, will refuse to sell or rent, after the making of a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the dwelling or property covered by this loan to any person because of race, color, religion, sex, or national origin;

(2) He/she recognizes that any restrictive covenant on the property relating to race, color, religion, sex or national origin is illegal and void and any such covenant is specifically disclaimed; and

(3) He/she understands that civil action for preventive relief may be brought by the Attorney General of the United States in any appropriate U.S. District Court against any person responsible for a violation of the applicable law.

(Authority: 38 U.S.C. 3703(c)(1))

§ 36.4869 Correction of structural defects.

(a) The purpose of this section is to specify the types of assistance that the Secretary may render pursuant to 38 U.S.C. 3727 to an eligible borrower who has been unable to secure satisfactory correction of structural defects in a dwelling encumbered by a mortgage securing a guaranteed, insured or direct loan, and the terms and conditions under which such assistance will be rendered.

(b) A written application for assistance in the correction of structural defects shall be filed by a borrower under a guaranteed, insured or direct loan with the Director of the Department of Veterans Affairs office having loan jurisdiction over the area in which the dwelling is located. The application must be filed not later than 4 years after the date on which the first direct, guaranteed or insured mortgage loan on the dwelling was made, guaranteed or insured by the Secretary. A borrower under a direct, guaranteed or insured mortgage loan on the same dwelling which was made, guaranteed or insured subsequent to the first such loan shall be entitled to file an application if it is filed not later than 4 years after the date on which such first loan was made, guaranteed or insured by the Secretary.

(c) An applicant for assistance under this section must establish that:

(1) The applicant is the owner of a one- to four-family dwelling which was inspected during construction by the Department of Veterans Affairs or the Federal Housing Administration.

(2) The applicant is an original veteran-borrower on an outstanding guaranteed, insured or direct loan secured by a mortgage on such dwelling which was made, guaranteed or insured on or after May 8, 1968. The Secretary may, however, recognize an applicant who is not the original veteran-borrower but who contracted to assume such borrower's personal obligation thereunder, if the Secretary determines that such recognition would be in the best interests of the Government in the particular case.

(3) There exists in such dwelling a structural defect, not the result of fire, earthquake, flood, windstorm, or waste, which seriously affects the livability of the dwelling.

(4) The applicant has made reasonable efforts to obtain correction of such structural defect by the builder, seller, or other person or firm responsible for the construction of the dwelling.

(d) In those instances in which the Secretary determines that assistance under this section is appropriate and necessary the Secretary may take any of the following actions:

(1) Pay such amount as is reasonably necessary to correct the defect, or

(2) Pay the claim of the borrower for reimbursement of the borrower's expenses for correcting or obtaining correction of the defect, or

(3) Acquire title to the property upon terms acceptable to the borrower and the holder of the guaranteed or insured loan.

(e) To the extent of any expenditure made by the Secretary pursuant to paragraph (d) of this section the Secretary shall be subrogated to any legal rights the borrower or applicant described in paragraph (c)(2) of this section may have against the builder, seller, or other persons arising out of the structural defect or defects.

(f) The borrower shall not be entitled, as a matter of right, to receive the assistance in the correction of structural defects provided in this section. Any determination made by the Secretary in

connection with a borrower's application for assistance shall be final and conclusive and shall not be subject to judicial or other review. Authority to act for the Secretary under this section is delegated to the Under Secretary for Benefits.

(g) For the purpose of this section, the term ''structural defects seriously affecting livability'' shall in no event be deemed to include—

(1) Defects of any nature in a dwelling in respect to which the applicant for assistance under this section was the builder or general contractor, or

(2) Structural features, improvements, amenities, or equipment which were not taken into account in the Secretary's determination of reasonable value.

(Authority: 38 U.S.C. 3703(c)(1), 3727)

§ 36.4870 Advertising and solicitation requirements.

Any advertisement or solicitation in any form (*e.g.*, written, electronic, oral) from a private lender concerning housing loans to be guaranteed or insured by the Secretary:

(a) Must not include information falsely stating or implying that it was issued by or at the direction of VA or any other department or agency of the United States, and

(b) Must not include information falsely stating or implying that the lender has an exclusive right to make loans guaranteed or insured by VA.

(Authority: 38 U.S.C. 3703(c)(1))

§ 36.4875 Insured loan and insurance account.

(a) Loans otherwise eligible may be insured when purchased by a lender eligible under 38 U.S.C. 3703(a) if the purchaser (lender) submits with the loan report evidence of an agreement, general or special, made prior to the closing of the loan, to purchase such loan subject to its being insured.

(b) A current account shall be maintained in the name of each insured lender or purchaser. The account shall be credited with the appropriate amounts available for the payment of losses on insured loans made or purchased. The account shall be debited with appropriate amounts on account of transfers, purchases under § 36.4820, or payment of losses. The Secretary may on 6 months' notice close any lender's insurance account. Such account after expiration of the 6-month period shall be available only as to loans embraced therein.

(c) Amounts received or recovered by the Secretary or the holder with respect to a loan after payment of an insured claim thereon will not restore any amount to the holder's insurance account.

(Authority: 38 U.S.C. 3703(a)(2))

§ 36.4877 Transfer of insured loans.

(a) In cases involving the transfer from one insured financial institution to another insured institution of loans which are transferred without recourse, guaranty, or repurchase agreement, if no payment on any loan included in the transfer is past due more than one calendar month at the time of transfer there shall be transferred from the insurance account of the transferor to the insurance account of the transferee an amount equal to the original percentage credited to the insurance account in respect to each loan being transferred applied to the unpaid balance of such loans, or to the purchase price, whichever is the lesser.

(b) Transfers between insurance accounts in a manner or under conditions not provided in paragraph (a) of this section must have the prior approval of the Secretary.

(c) Where loans are transferred with recourse or under a guaranty or repurchase agreement no insurance credit will be transferred or insurance account affected and no reports will be required.

(d) In all cases of transfer of loans from one insured financial institution to another insured institution, except as provided in paragraph (c) of this section, a report on a prescribed form executed by the parties and showing their agreement with regard to the transfer of insurance credits shall be made to the Secretary.

(Authority: 38 U.S.C. 3703(c)(1))

§ 36.4878 Debits and credits to insurance account under § 36.4820.

In the event that an insured loan is transferred under the provisions of § 36.4820, there shall be charged to the insurance account of the transferor a sum equal to the amount paid transferor on account of the indebtedness less the current market value of the property transferred as security therefor as determined by an appraiser designated by the Secretary, or the amount chargeable to such insurance account in the event of a transfer under § 36.4877, whichever sum is the greater. The credit to the insurance account of the transferee will be computed in accordance with § 36.4877(a).

(Authority: 38 U.S.C. 3703(c)(1))

§ 36.4879 Payment of insurance.

(a) Upon the continuance of a default for a period of three months, the holder may proceed to establish the net loss, after giving the notices prescribed in §§ 36.4817 and 36.4850 if security is available. The net loss shall be reported to the Secretary with proper claim, whereupon the holder shall be entitled to payment of the claim within the amount then available for such payment under the payee's related insurance account. Subject to the provisions of the paragraph (b) of this section and to § 36.4875(b) a supplemental claim for any balance of an insurance loss may be filed at any time within 5 years after the date of the original claim.

(b) The basis of the claim for an insured loss shall consist in the unrealized principal or the amount paid for the obligation, if less, plus unrealized interest to the date of claim or the date of sale whichever is earlier, and those expenses, if any, allowable under § 36.4814, but subject to proper credits because of payments, set-off, proceeds of security or otherwise, provided that if there is no liquidation of security the claim shall not include an accrual of interest for a period in excess of 6 months from the date of the first uncured default.

(Authority: 38 U.S.C. 3703(c)(1))

§ 36.4880 Reports of insured institutions.

An insured financial institution shall make such reports respecting its insurance accounts as the Secretary may from time to time require, not more frequently than semiannually.

(Authority: 38 U.S.C. 3703(c)(1))

§ 36.4890 Purpose.

Sections 36.4890 through 36.4893 are promulgated to achieve the aims of the applicable provisions of Executive Orders 11246 and 11375 and the regulations of the Secretary of Labor with respect to federally assisted construction contracts.

§ 36.4891 Applicability.

(a) For the purposes of the home loan guaranty and insurance and direct loan programs of the Department of Veterans Affairs, the term ''applicant for Federal assistance'' or ''applicant'' in Part III of Executive Order 11246, shall mean the builder, sponsor or developer of land to be improved by such builder, sponsor or developer for the purpose of constructing housing thereon for sale to eligible veterans with financing which is to be guaranteed or insured or made under the provisions of 38 U.S.C. chapter 37, or the builder, sponsor or developer of housing to be constructed for sale to eligible veterans with financing which is to be guaranteed or insured or made under the provisions of 38 U.S.C. chapter 37.

(b) The provisions of Executive Orders 11246 and 11375 and the rules and regulations of the Secretary of Labor are applicable to:

(1) Each Master Certificate of Reasonable Value or extension or modification thereof relating to proposed construction issued on or after July 22, 1963;

(2) Each individual Certificate of Reasonable Value or extension or modification thereof relating to proposed construction issued on or after July 22, 1963, except as provided in paragraph (c)(2) of this section;

(3) Each Special Conditions Letter or modification thereof issued on or after July 22, 1963, in respect to site approval of land to be improved by a builder, sponsor or developer for the construction of housing thereon; and

(4) Each direct loan fund reservation commitment or extension thereof issued to builders on or after July 22, 1963.

(c) The provisions of Executive Orders 11246 and 11375 and the rules and regulations of the Secretary of Labor are not applicable to:

(1) Grants under chapter 21, title 38, U.S.C.;

(2) Individual Certificates of Reasonable Value issued on or after July 22, 1963, if:

(i) The certificate relates to existing properties, either previously occupied or unoccupied; or

(ii) The certificate relates to proposed construction and—

(A) A veteran was named in the request for appraisal, or

(B) A veteran contracted for the construction or purchase of the home prior to issuance of the certificate, or

(C) The property was listed in the Schedule of Reasonable Values on an outstanding Master Certificate of Reasonable Value issued prior to July 22, 1963;

(3) Any contract or subcontract for construction work not exceeding $10,000; and

(4) Any other contract or subcontract which is exempted or excepted by the regulations of the Secretary of Labor.

(Authority: 38 U.S.C. 3703(c)(1))

§ 36.4892 Certification requirements.

In any case in which §§ 36.4890 through 36.4893 are applicable, as set forth in § 36.4891, no action will be taken by the Department of Veterans Affairs on any request for appraisal relating to proposed construction, site approval of land to be improved by a builder, sponsor or developer for the construction of housing thereon, or for a direct loan fund reservation commitment unless the builder, sponsor or developer has furnished the Department of Veterans Affairs a signed certification in form as follows:

To induce the Department of Veterans Affairs to act on any request submitted by or on behalf of the undersigned for site approval of land to be improved for the construction of housing thereon to be financed with loans guaranteed, insured or made by the Department of Veterans Affairs, or for establishment by the Department of Veterans Affairs of reasonable value relating to proposed construction or for direct loan fund reservation commitments, the undersigned hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work or modification thereof, as defined in the rules and regulations of the Secretary of Labor relating to the land or housing included in its request to the Department of Veterans Affairs the following equal opportunity clause:

During the performance of this contract the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Except in special cases and in subcontracts for the performance of construction work at the site of construction, the clause is not required to be inserted in subcontracts below the second tier. Subcontracts may incorporate by reference the equal opportunity clause.

The undersigned further agrees that it will be bound by the above equal opportunity clause in any federally assisted construction work which it performs itself other than through the permanent work force directly employed by an agency of Government.

The undersigned agrees that it will cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance. The undersigned further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to Part II, Subpart D of Executive Order 11246 and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon the contractors and subcontractors by the administering agency

or the Secretary of Labor pursuant to Part II, Subpart D of Executive Order 11246.

In addition, the undersigned agrees that if it fails or refuses to comply with these undertakings such failure or refusal shall be a proper basis for cancellation by the Department of Veterans Affairs of any outstanding master certificates of reasonable value or individual certificates of reasonable value relating to proposed construction, except in respect to cases in which an eligible veteran has contracted to purchase a property included on such certificates, and for the rejection of future requests submitted by the undersigned or on his or her behalf for site approval, appraisal services, and direct loan fund reservation commitments until satisfactory assurance of future compliance has been received from the undersigned, and for referral of the case to the Department of Justice for appropriate legal proceedings.

(Authority: 38 U.S.C. 3703(c)(1))

§ 36.4893 Complaint and hearing procedure.

(a) Upon receipt of a written complaint signed by the complainant to the effect that any person, firm or entity has violated the undertakings referred to in § 36.4892, such person, firm or other entity shall be invited to discuss the matter in an informal hearing with the Director of the Department of Veterans Affairs regional office or center.

(b) If the existence of a violation is denied by the person, firm or other entity against which a complaint has been made, the Director or designee shall conduct such inquiries and hearings as may be deemed appropriate for the purpose of ascertaining the facts.

(c) If it is found that the person, firm or other entity against which a complaint has been made has not violated the undertakings referred to in § 36.4892, the parties shall be so notified.

(d) If it is found that there has been a violation of the undertakings referred to in § 36.4892, the person, firm or other entity in violation shall be requested to attend a conference for the purpose of discussing the matter. Failure or refusal to attend such a conference shall be proper basis for the application of sanctions.

(e) The conference arranged for discussing a violation shall be conducted in an informal manner and shall have as its primary objective the elimination of the violation. If the violation is eliminated and satisfactory assurances are received that the person, firm or other entity in violation will comply with the undertakings pursuant to § 36.4892 in the future, the parties concerned shall be so notified.

(f) Failure or refusal to comply and give satisfactory assurances of future compliance with the equal employment opportunity requirements shall be proper basis for applying sanctions. The sanctions shall be applied in accordance with the provisions of Executive Order 11246 as amended and the regulations of the Secretary of Labor.

(g) Upon written application, a complainant or a person, firm or other entity against which a complaint has been filed may apply to the Under Secretary for Benefits for a review of the action taken by a Director. Upon receiving such application, the Under Secretary for Benefits may designate a representative or representatives to conduct an informal hearing and to make a report of findings. The Under Secretary for Benefits may, after a review of such report, modify or reverse an action taken by a Director.

(h) Reinstatement of restricted persons, firms or other entities shall be within the discretion of the Under Secretary for Benefits and under such terms as the Under Secretary for Benefits may prescribe.

(Authority 38 U.S.C. 3703(c)(1))

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Federal Register

Friday,
February 1, 2008

Part III

Department of Transportation

Federal Railroad Administration

49 CFR Parts 223 and 238

Passenger Train Emergency Systems; Emergency Communication, Emergency Egress, and Rescue Access; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 223 and 238

[Docket No. FRA–2006–25273, Notice No. 2]

RIN 2130–AB72

Passenger Train Emergency Systems; Emergency Communication, Emergency Egress, and Rescue Access

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule is intended to further the safety of passenger train occupants through both enhancements and additions to FRA's existing requirements for emergency systems on passenger trains. In this final rule, FRA is enhancing existing requirements for emergency window exits and establishing requirements for rescue access windows for emergency responders to use to evacuate passenger train occupants. FRA is also enhancing passenger train emergency system requirements by expanding the application of existing requirements that are currently applicable only to passenger trains operating at speeds in excess of 125 mph (Tier II passenger trains) to cover passenger trains operating at speeds at or below 125 mph (Tier I passenger trains) as well; in particular, these enhancements require that Tier I passenger trains be equipped with public address (PA) and intercom systems for emergency communication and that passenger cars provide emergency roof access for use by emergency responders. FRA is applying certain of the requirements to both existing and new passenger equipment, while other requirements apply to new passenger equipment only.

EFFECTIVE DATE: The final rule is effective April 1, 2008. The incorporation by reference of a certain publication listed in the rule is approved by the Director of the Federal Register as of April 1, 2008. Petitions for reconsideration of this final rule must be received not later than March 17, 2008.

ADDRESSES: Any petition for reconsideration should reference Docket No. FRA–2006–25273, Notice No. 2, and be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Instructions: For detailed instructions on submitting petitions for reconsideration and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all petitions for reconsideration received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents, comments, or petitions for reconsideration received, go to *http://www.regulations.gov* anytime, or to the Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Brenda J. Moscoso, Office of Safety, Staff Director, Planning and Evaluation, Mail Stop 25, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590 (telephone 202–493–6282); Daniel L. Alpert, Trial Attorney, Office of Chief Counsel, Mail Stop 10, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590 (telephone 202–493–6026); or Anna Nassif Winkle, Trial Attorney, Office of Chief Counsel, Mail Stop 10, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590 (telephone 202–493–6166).

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I. Statutory Background

In September of 1994, the Secretary of Transportation (Secretary) convened a meeting of representatives from all sectors of the rail industry with the goal of enhancing rail safety. As one of the initiatives arising from this Rail Safety Summit, the Secretary announced that DOT would begin developing safety standards for rail passenger equipment over a five-year period. In November of 1994, Congress adopted the Secretary's schedule for implementing rail passenger equipment safety regulations and included it in the Federal Railroad Safety Authorization Act of 1994 (the Act), Pub. L. No. 103–440, 108 Stat. 4619, 4623–4624 (November 2, 1994). Congress also authorized the Secretary to consult with various organizations involved in passenger train operations for purposes of prescribing and amending these regulations, as well as issuing orders pursuant to them. Section 215 of the Act is codified at 49 U.S.C. 20133.

II. Proceedings to Date

A. Proceedings To Carry Out the Initial Rulemaking Mandate

The Secretary delegated these rulemaking responsibilities to the Federal Railroad Administrator, *see* 49 CFR 1.49(m), and FRA formed the Passenger Equipment Safety Standards Working Group to provide FRA with advice in developing the regulations. On June 17, 1996, FRA published an advance notice of proposed rulemaking (ANPRM) concerning the establishment of comprehensive safety standards for railroad passenger equipment. *See* 61 FR 30672. The ANPRM provided background information on the need for such standards, offered preliminary ideas on approaching passenger safety issues, and presented questions on various passenger safety topics. Following consideration of comments received on the ANPRM and advice from FRA's Passenger Equipment Safety Standards Working Group, FRA published an NPRM on September 23, 1997, to establish comprehensive safety standards for railroad passenger equipment. *See* 62 FR 49728. In addition to requesting written comment on the NPRM, FRA also solicited oral comment at a public hearing held on November 21, 1997. FRA considered the comments received on the NPRM and prepared a final rule establishing comprehensive safety standards for passenger equipment, which was published on May 12, 1999. *See* 64 FR 25540.

After publication of the final rule, interested parties filed petitions seeking FRA's reconsideration of certain requirements contained in the rule. These petitions generally related to the following subject areas: structural design; fire safety; training; inspection, testing, and maintenance; and movement of defective equipment. To address the petitions, FRA grouped issues together and published in the **Federal Register** three sets of amendments to the final rule. Each set of amendments summarized the petition requests at issue, explained what action, if any, FRA decided to take in response to the issues raised, and described FRA's justifications for its decisions and any action taken. Specifically, on July 3, 2000, FRA issued a response to the petitions for reconsideration relating to the inspection, testing, and maintenance of passenger equipment, the movement of defective passenger equipment, and other miscellaneous provisions related to mechanical issues contained in the final rule. *See* 65 FR 41284. On April 23, 2002, FRA responded to all remaining issues raised in the petitions for reconsideration, with the exception of those relating to fire safety. *See* 67 FR 19970. Finally, on June 25, 2002, FRA completed its response to the petitions for reconsideration by publishing a response to the petitions for reconsideration concerning the fire safety portion of the rule. *See* 67 FR 42892. (For more detailed information on the petitions for reconsideration and FRA's response to them, please see these three rulemaking documents.) The product of this rulemaking was codified primarily at 49 CFR part 238 and secondarily at 49 CFR parts 216, 223, 229, 231, and 232.

Meanwhile, another rulemaking on passenger train emergency preparedness produced a final rule codified at 49 CFR part 239. *See* 63 FR 24629 (May 4, 1998). The rule addresses passenger train emergencies of various kinds, including security situations, and requires the preparation, adoption, and implementation of emergency preparedness plans by railroads connected with the operation of passenger trains. The emergency preparedness plans must include elements such as communication, employee training and qualification, joint operations, tunnel safety, liaison with emergency responders, on-board emergency equipment, and passenger safety information. The rule requires each affected railroad to instruct its employees on the applicable provisions of its plan, and the plan adopted by each railroad is subject to formal review and approval by FRA. The rule also requires each railroad operating passenger train service to conduct emergency simulations to determine its capability to execute the emergency preparedness plan under the variety of emergency scenarios that could reasonably be expected to occur.

In addition, in promulgating the rule, FRA established specific requirements for passenger train emergency systems. Among these are requirements that all emergency window exits and all windows intended for rescue access by emergency responders be marked and that instructions be provided for their use; and also requirements that all door exits intended for egress be lighted or marked, all door exits intended for rescue access by emergency responders be marked, and that instructions be provided for their use.

B. Key Issues Identified for Future Rulemaking

While FRA had completed these rulemakings, FRA had identified various issues for possible future rulemaking, including those to be addressed following the completion of additional research, the gathering of additional operating experience, or the development of industry standards, or all three. One such issue concerned expanding the application of emergency system requirements pertaining to Tier II passenger equipment to Tier I passenger equipment as well. Another issue concerned specifying minimum numbers and locations of windows intended for emergency responder access to passenger cars, as 49 CFR 223.9(d)(2) addressed only marking and instruction requirements and did not provide any express requirement that any rescue access windows be present. FRA and interested industry members also began identifying other issues related to the new passenger equipment safety standards and the passenger train emergency preparedness regulations. FRA decided to address these issues with the assistance of RSAC.

C. RSAC Overview

In March 1996, FRA established RSAC, which provides a forum for developing consensus recommendations to FRA's Administrator on rulemakings and other safety program issues. The Committee includes representation from all of the agency's major customer groups, including railroads, labor organizations, suppliers and manufacturers, and other interested parties. A list of member groups follows:

- American Association of Private Railroad Car Owners (AAPRCO);
- American Association of State Highway and Transportation Officials (AASHTO);
- American Chemistry Council;
- American Petroleum Institute;
- APTA;
- American Short Line and Regional Railroad Association (ASLRRA);
- American Train Dispatchers Association;
- Association of American Railroads (AAR);
- Association of Railway Museums;
- Association of State Rail Safety Managers (ASRSM);
- Brotherhood of Locomotive Engineers and Trainmen (BLET);
- Brotherhood of Maintenance of Way Employees Division;
- Brotherhood of Railroad Signalmen (BRS);
- Chlorine Institute;
- Federal Transit Administration (FTA)*;
- Fertilizer Institute;
- High Speed Ground Transportation Association (HSGTA);
- Institute of Makers of Explosives;
- International Association of Machinists and Aerospace Workers;
- International Brotherhood of Electrical Workers (IBEW);

- Labor Council for Latin American Advancement*;
- League of Railway Industry Women*;
- National Association of Railroad Passengers (NARP);
- National Association of Railway Business Women*;
- National Conference of Firemen & Oilers;
- National Railroad Construction and Maintenance Association;
- National Railroad Passenger Corporation (Amtrak);
- NTSB *;
- Railway Supply Institute (RSI);

Indicates associate, non-voting membership.

- Safe Travel America (STA);
- Secretaria de Comunicaciones y Transporte*;
- Sheet Metal Workers International Association (SMWIA);
- Tourist Railway Association, Inc.;
- Transport Canada*;
- Transport Workers Union of America (TWU);
- Transportation Communications International Union/BRC (TCIU/BRC);
- Transportation Security Administration (TSA)*; and
- United Transportation Union (UTU).

* Indicates associate, non-voting membership.

When appropriate, FRA assigns a task to RSAC, and after consideration and debate, RSAC may accept or reject the task. If the task is accepted, RSAC establishes a working group that possesses the appropriate expertise and representation of interests to develop recommendations to FRA for action on the task. These recommendations are developed by consensus. A working group may establish one or more task forces to develop facts and options on a particular aspect of a given task. The individual task force then provides that information to the working group for consideration. If a working group comes to unanimous consensus on recommendations for action, the package is presented to the full RSAC for a vote. If the proposal is accepted by a simple majority of RSAC, the proposal is formally recommended to FRA. FRA then determines what action to take on the recommendation. Because FRA staff play an active role at the working group level in discussing the issues and options and in drafting the language of the consensus proposal, FRA is often favorably inclined toward the RSAC recommendation. However, FRA is in no way bound to follow the recommendation, and the agency exercises its independent judgment on whether the recommended rule achieves the agency's regulatory goal, is soundly supported, and is in accordance with policy and legal requirements. Often, FRA varies in some respects from the RSAC recommendation in developing the actual regulatory proposal or final rule. Any such variations would be noted and explained in the rulemaking document issued by FRA. If the working group or RSAC is unable to reach consensus on a recommendation for action, FRA moves ahead to resolve the issue through traditional rulemaking proceedings.

D. Establishment of the Passenger Safety Working Group

On May 20, 2003, FRA presented, and RSAC accepted, the task of reviewing existing passenger equipment safety needs and programs and recommending consideration of specific actions that could be useful in advancing the safety of rail passenger service. The RSAC established the Passenger Safety Working Group (Working Group) to handle this task and develop recommendations for the full RSAC to consider. Members of the Working Group, in addition to FRA, include the following:

- AAR, including members from BNSF Railway Company (BNSF), CSX Transportation, Inc., and Union Pacific Railroad Company;
- AAPRCO;
- AASHTO;
- Amtrak;
- APTA, including members from Bombardier, Inc., LDK Engineering, Herzog Transit Services, Inc., Long Island Rail Road (LIRR), Metro-North Commuter Railroad Company (Metro-North), Northeast Illinois Regional Commuter Railroad Corporation (Metra), Southern California Regional Rail Authority (Metrolink), and Southeastern Pennsylvania Transportation Authority (SEPTA);
- BLET;
- BRS;
- FTA;
- HSGTA;
- IBEW;
- NARP;
- RSI;
- SMWIA;
- STA;
- TCIU/BRC;
- TWU; and
- UTU.

Staff from DOT's John A. Volpe National Transportation Systems Center (Volpe Center) attended all of the meetings and contributed to the technical discussions. In addition, staff from the NTSB met with the Working Group when possible. The Working Group has held ten meetings on the following dates and locations:

- September 9–10, 2003, in Washington, DC;
- November 6, 2003, in Philadelphia, PA;
- May 11, 2004, in Schaumburg, IL;
- October 26–27, 2004 in Linthicum/Baltimore, MD;
- March 9–10, 2005, in Ft. Lauderdale, FL;
- September 7, 2005 in Chicago, IL;
- March 21–22, 2006 in Ft. Lauderdale, FL;
- September 12–13, 2006 in Orlando, FL;
- April 17–18, 2007 in Orlando, FL; and
- December 11, 2007 in Ft. Lauderdale, FL.

At the meetings in Chicago and Ft. Lauderdale in 2005, FRA met with representatives of Tri-County Commuter Rail and Metra, respectively, and toured their passenger equipment. The visits, which included demonstrations of emergency system features, were open to all members of the Working Group, and FRA believes they have added to the collective understanding of the Group in identifying and addressing passenger train emergency system issues.

E. Establishment of the Emergency Preparedness Task Force

Due to the variety of issues involved, at its November 2003 meeting the Working Group established four task forces—smaller groups to develop recommendations on specific issues within each group's particular area of expertise. Members of the task forces include various representatives from the respective organizations that were part of the larger Working Group. One of these task forces was assigned the job of identifying and developing issues and recommendations specifically related to the inspection, testing, and operation of passenger equipment as well as concerns related to the attachment of safety appliances on passenger equipment. An NPRM on these topics was published on December 8, 2005 (*see* 70 FR 73069), and a final rule was published on October 19, 2006 (*see* 71 FR 61835). Another of these task forces was assigned the job of developing recommendations related to window glazing integrity, structural crashworthiness, and the protection of occupants during accidents and incidents. This work of this task force led to the publication of an NPRM focused on enhancing the front-end strength of cab cars and multiple-unit (MU) locomotives on August 1, 2007. *See* 72 FR 42016. Another task force, the Emergency Preparedness Task Force (Task Force), was established to identify

issues and develop recommendations related to emergency systems, procedures, and equipment. Specifically, the Task Force was charged with evaluating APTA's standards for emergency systems for their incorporation by reference as Federal standards and requirements. These APTA standards are aimed at promoting the ability of passenger car occupants to reach, identify, and operate emergency exits under various conditions. The Task Force was also given the responsibility of addressing a number of other emergency systems issues and to recommend any research necessary to facilitate their resolution. Members of the Task Force, in addition to FRA, include, or have included, the following:

- Amtrak;
- APTA, including members from Bombardier, Ellcon National, Go Transit, Interfleet, Jacobs Civil Engineering, Jessup Manufacturing Company, Kawasaki Rail Car, Inc., LDK Engineering, LIRR, LTK, Luminator, Maryland Transit Administration, Massachusetts Bay Transportation Authority (MBTA), Metrolink, Metro-North, Northern Indiana Commuter Transit District (NICTD), SEPTA, San Diego Northern Commuter Railroad (Coaster), Permalight, PO's Ability USA, Inc., Prolink, Transit Design Group (TDG),Transit Safety Management (TSM), Translite, STV Inc., and Visual Marking Systems, Inc.;
- BLET;
- California Department of Transportation (Caltrans);
- FTA;
- NARP;
- RSI, including Globe Transportation Graphics;
- TWU; and
- UTU.

While not voting members of the Task Force, representatives from the NTSB and from TSA, of the U.S. Department of Homeland Security (DHS), attended certain of the meetings and contributed to the discussions of the Task Force. In addition, staff from the Volpe Center attended all of the meetings and contributed to the technical discussions through their comments and presentations and by setting up various lighting, marking, and signage demonstrations.

The Task Force has held 15 meetings on the following dates and locations:

- February 25–26, 2004, in Los Angeles, CA;
- April 14–15, 2004, in Cambridge, MA;
- July 7–8, 2004, in Washington, DC;
- September 13–14, 2004, in New York, NY;
- December 1–2, 2004, in San Diego, CA;
- February 16–17, 2005, in Philadelphia, PA;
- April 19–20, 2005, in Cambridge, MA;
- August 2–3, 2005, in Cambridge, MA;
- December 13–14, 2005, in Baltimore, MD;
- August 10, 2006, in Grapevine, TX;
- October 25–26, 2006, in Philadelphia, PA;
- December 6–7, 2006, in Washington, DC;
- March 28–29, 2007, in Los Angeles, CA;
- June 13–14, 2007, in San Francisco, CA; and
- October 17–18, 2007, in Arlington, VA.

At meetings in Los Angeles, Cambridge, Washington, New York, San Diego, Philadelphia, and San Francisco, FRA met with representatives of Metrolink, MBTA, Amtrak, LIRR, Coaster, SEPTA, and Caltrans, respectively, and toured their passenger equipment. The visits were open to all members of the Task Force and included demonstration of emergency system features. As in the case of the Working Group visits, FRA believes they have added to the collective understanding of the Task Force in identifying and addressing passenger train emergency system issues for not only this rulemaking, but for future rulemakings as well.

F. Development of the NPRM

The NPRM was developed to address a number of the concerns raised and issues discussed during the various Task Force and Working Group meetings. Minutes of each of these meetings have been made part of the docket in this proceeding and are available for public inspection. The Working Group reached full consensus on all the regulatory provisions contained in the NPRM at its meetings in March and September 2005. After the March 2005 meeting, the Working Group presented its recommendations to the full RSAC for concurrence at its meeting in May 2005. All of the members of the full RSAC in attendance at its May 2005 meeting accepted the regulatory recommendations submitted by the Working Group. Thus, the Working Group's recommendations became the full RSAC's recommendations to FRA. In October 2005, the full RSAC also recommended that FRA adopt a further recommendation from the Working Group at its September 2005 meeting—that FRA grant additional time for compliance with the proposal on rescue access windows. After reviewing the full RSAC's recommendations, FRA agreed that the recommendations provided a sound basis for a proposed rule and adopted the recommendations with generally minor changes for purposes of clarity and formatting in the **Federal Register**.

The NPRM was published in the **Federal Register** on August 24, 2006 (*see* 71 FR 50276), and FRA solicited public comment on it. FRA specifically invited comment on a number of issues related to the proposed requirements for the purpose of developing the final rule, in addition to notifying the public of its option to submit written comments on the NPRM and to request a public, oral hearing on the NPRM.

G. Development of the Final Rule, including Response to Written Comments

This final rule is the product of FRA's review, consideration, and acceptance of the recommendations of the Task Force, Working Group, and full RSAC, and of the written comments on which they are based. FRA received two written comments in response to the publication of the NPRM: one from the NTSB; the other from Caltrans. The NTSB indicated that the NPRM was consistent with the intent of its safety recommendation to FRA relevant to these emergency systems, and expressed support for the proposed emergency communication system and emergency roof access requirements. Caltrans' comments related to the requirement for staggering the location of emergency window exits to the extent practical and to the proposed requirement for inspecting emergency roof access markings. As explained further below, after discussing the comments with the Task Force, the Task Force made consensus recommendations to resolve Caltrans' two concerns by clarifying in this preamble the requirement for staggering, and by granting Caltrans' request to extend the interval between inspections for roof access markings to a maximum of 368 days, instead of the 184 days that FRA had proposed. FRA agrees with the underlying rationale for these recommendations and has modified the final rule accordingly. FRA did not receive a request for a public, oral hearing on the NPRM, and none was held.

Throughout the preamble discussion of this final rule, FRA refers to comments, views, suggestions, or recommendations made by members of the Task Force, Working Group, and full RSAC, as they are identified or contained in the minutes of their

meetings. FRA does so to show the origin of certain issues and the nature of discussions concerning those issues at the Task Force, Working Group, and full RSAC level. FRA believes this serves to illuminate factors that it has weighed in making its regulatory decisions, as well as the logic behind those decisions. The reader should keep in mind, of course, that only the full RSAC makes recommendations to FRA and that it is the consensus recommendation of the full RSAC on which FRA is acting. However, as noted above, FRA is in no way bound to follow the recommendation, and the agency exercises its independent judgment on whether the recommended rule achieves the agency's regulatory goal, is soundly supported, and is in accordance with policy and legal requirements.

III. Technical Background

Trends in new passenger car orders, experience with passenger train accidents, concern about emergency communication, and technological advances in emergency systems provided the main impetus for these enhancements and additions to FRA's standards for passenger train emergency systems, as highlighted below.

A. Change in the Composition of the Passenger Car Fleet

While FRA was developing the Passenger Equipment Safety Standards and the Passenger Train Emergency Preparedness regulations in the 1990s, the operation of multi-level passenger cars having two seating levels for passengers (*i.e.*, bi-level cars) was common. However, the operation of multi-level passenger cars having three seating levels for passengers (*i.e.*, cars with intermediate (or mezzanine) seating levels) was not as prevalent in the U.S. as it is today. As a result, in those rulemakings there was less focus on the need for applying emergency system safety standards to intermediate seating levels of multi-level passenger cars.

Since that time, the composition of the Nation's commuter rail fleet has changed. Multi-level passenger cars with passenger seating in intermediate levels have become more prevalent and now account for over 15 percent of all passenger cars. The intermediate seating levels in these multi-level passenger cars are normally located at the far ends of the cars and are connected to the upper and lower seating levels by stairs. Exterior side doors are also often located toward the ends of these cars to facilitate boarding and de-boarding. Given the constraint posed by station platform lengths and the desire to minimize station dwell time, railroads have turned to multi-level passenger cars with intermediate seating levels to meet much of the increased demand for service, to the extent that vertical clearances permit their operation.

In light of the growing use of multi-level passenger cars with intermediate seating levels, this final rule helps to address the need to provide more explicit emergency system safety standards for these passenger cars.

B. NTSB Safety Recommendation on Windows

On April 23, 2002, a BNSF freight train collided head on with a standing Metrolink passenger train near Placentia, CA, resulting in two fatalities and numerous injuries on the Metrolink train. Though not a contributing factor to the fatalities or injuries, the force of the collision blocked the rear end door and also blocked the rear stairway linking the upper and lower seating levels to the seating area on the intermediate level at the rear of the Metrolink cab car. Although passengers in that intermediate level seating area did exit through an emergency window, no windows on the intermediate level had been designated for rescue access, and consequently no instructions for emergency responders to gain access to the intermediate level through a window had been posted. Concerned with the extent of Federal requirements relating to rescuing passengers from the intermediate level of a multi-level passenger car, the NTSB issued Safety Recommendation R–03–21 to FRA on November 6, 2003. Safety Recommendation R–03–21 provides in full as follows:

> Revise the language of 49 Code of Federal Regulations 238.113(a)(1) to reflect that appropriate exterior instructional signage describing the emergency removal procedure be required at emergency windows on all levels of a multiple-level passenger railcar.

In a February 20, 2004 letter to the NTSB, FRA noted that its existing regulations do require that windows intended for emergency responder access on every level of a multi-level passenger car be clearly marked and that clear and understandable instructions for their removal be posted at or near the windows on the car's exterior. *See* 49 CFR 223.9(d)(2). FRA also sent a letter to passenger railroads to make this clear in the event there was any confusion about these requirements. Nevertheless, the NTSB's recommendation highlighted the fact that several related concerns were not specifically addressed in FRA's regulations. One of these concerns was specifying minimum numbers and locations of windows intended for emergency responder access to passenger cars, as 49 CFR 223.9(d)(2) addressed only marking and instruction requirements and did not provide any express requirement that any such rescue access windows be present. A second prominent issue concerned specifying minimum numbers and locations of emergency window exits on any level of a multi-level passenger car—not just on main levels, as then provided in 49 CFR 238.113(a)(1).

FRA informed the NTSB that it was reviewing and considering the necessity of making amendments to its safety standards for passenger trains through the RSAC process and that these and other passenger safety issues would be presented to the Working Group and the Task Force for their consideration. Therefore, FRA asked that the NTSB classify Safety Recommendation R–03–21 as ''Open—Acceptable Response,'' pending the results of this effort. (The NTSB classification ''Open—Acceptable Response'' means a ''[r]esponse by recipient indicates a planned action that would comply with the safety recommendation when completed.'') By letter dated June 2, 2004, the NTSB formally classified the recommendation as FRA requested.

The Task Force reviewed the NTSB's recommendation and the related issues that FRA presented to it and agreed to address emergency window exits and rescue access windows on a broad basis, with the goal that windows for emergency egress and rescue access would be available on every level of a passenger car in the event that a stairway or interior door is compromised and access to the primary means of exit (doors) is blocked. To this end, the Task Force agreed to develop requirements for emergency window exits on non-main levels of multi-level passenger cars, and rescue access windows on all levels of these cars, thus addressing requirements for every seating level of a passenger car.

C. Need for Emergency Communication Systems

Traditionally, conductors and assistant conductors have been relied upon to relay information to passengers in both normal and emergency situations through face-to-face communication or by use of the PA system. However, with smaller crew sizes, passengers may not be able to tell the crew about a medical emergency, report a fire on board the train, or provide notification of other safety issues as quickly as may be necessary. For instance, a passenger in the last car of a train needing to report an

emergency situation could potentially have to walk the entire length of the train to communicate with the conductor (assuming the crew is composed of an engineer and only one conductor). Further, if the conductor became incapacitated, passengers would need to communicate directly with the engineer.

FRA also notes that the NTSB's report on its investigation of the February 9, 1996 collision near Secaucus, NJ, that involved two New Jersey Transit Rail Operations (NJTR) trains and resulted in three fatalities and numerous injuries, touches on the importance of emergency communication systems to prevent panic and further injuries. According to the NTSB report of the accident investigation,

> [a]lthough the train crews said that they went from car to car instructing passengers to remain seated, passengers said that they were not told about the severity of the situation and were concerned about a possible fire or being struck by an oncoming train. They therefore left the train and wandered around the tracks waiting for guidance, potentially posing a greater hazard because of the leaking fuel from train 1107.
>
> No crewmember used the public address system to communicate with passengers. By using the public address system, all passengers would have received the same message in less time than it would have taken the NJT employees to walk from car to car.

The report also stated:

> Information about the possibility of a fire or a collision with an oncoming train could have been provided to passengers over the public address system to address their concerns and prevent them from leaving the train. The Safety Board concludes that the lack of public announcements addressing the passengers' concerns caused them to act independently, evacuate the train, and wander along the tracks, thus potentially contributing to the dangerous conditions at the collision site.

NTSB/RAR–97/01, at p. 27.

In 1998, APTA recognized the importance of emergency communication systems when it issued APTA SS–PS–001–98, ''Standard for Passenger Railroad Emergency Communications,'' noting that the establishment and execution of communications among train crews, operations control personnel, and train passengers are of the utmost importance under normal circumstances. According to the APTA standard, during emergency situations such communications take on added importance in the task of assuring the safety of all involved.

While the Passenger Equipment Safety Standards issued in 1999 by FRA contain requirements for two-way emergency communication systems for Tier II passenger equipment (trains operating at speeds exceeding 125 mph, but not exceeding 150 mph), there are no requirements that Tier I passenger cars be equipped with any emergency communication system. In that rulemaking, concern had been raised about the practicability of applying such requirements to Tier I passenger equipment because of the interoperability of such equipment and the possible incompatibility of communications equipment in a Tier I passenger train. *See* 64 FR 25540, 25641 (May 12, 1999). Nevertheless, most existing passenger cars are equipped with PA systems, and intercom systems are common in new passenger cars.

FRA notes that, while there are many possible ways for an emergency situation to arise on a passenger train, an emergency system may be useful in many situations, regardless of the origin of the emergency. In this regard, emergency communication systems provide the added benefit of conveying information about security threats and handling security concerns. According to TSA, terrorists have considered attacks on subways and trains in the U.S., and TSA has found that passenger railroads and subways in the U.S. are particularly high-consequence targets in terms of potential loss of life and economic disruption. DHS, including TSA, as well as DOT's FRA and FTA have been actively engaged in responding to the threat of terrorism to our Nation's rail system, and have undertaken numerous initiatives to advance the safety and security of railroad passengers, railroad employees, and the public as a whole. Consistent with this response, the ability of passengers to timely report suspicious items and suspicious activity onboard passenger trains to appropriate personnel increases the likelihood of detecting terrorist planning activity or an attempted attack and thwarting it, or at least disrupting it and minimizing its consequences. This would also be facilitated by the ability of the train crew to timely communicate emergency information and instructions to passengers in response to a security threat.

FRA also notes that emergency system requirements for such features as emergency window exits and emergency lighting, which were not specifically developed to address security threats, may play a critical role in minimizing the consequences of a terrorist attack onboard a passenger train. The safety and security functions that passenger train emergency systems may serve make them vital, and further enhancements and additions to emergency systems should be explored both to reduce the risk of a terrorist attack to passenger trains, to minimize the consequences of such an attack if it occurs, and to promote passenger train safety overall.

D. Window Technology

A ''zip-strip'' is a strip of rubber gasketing that holds a window panel in place and is capable of being pulled, or pried and then pulled, like a zipper from the panel that it holds. Zip-strips have been used for window removal for some time. Yet, the introduction of windows using zips-strips on both faces of the same window has allowed railroads to designate for rescue access those windows that are best suited for that purpose, without impacting the selection of emergency window exits or compromising compliance with safety glazing requirements. Before this technology was available, railroads that used zip-strips for window removal had to decide which windows would be designated for emergency egress and which would be designated for rescue access, as there was only one zip-strip available to open. Equipping cars with more rescue access windows with zip-strips meant having fewer emergency window exits, all things being equal, even though it would be preferable to have more emergency window exits than rescue access windows as occupants should normally begin to self-evacuate via emergency window exits before emergency responders arrive to assist. Whereas railroads could generally designate any window for rescue access by providing instructions for removal using tools normally available to emergency responders to pop out a window, such as a sledge hammer or a fire axe, some railroads prefer to equip windows with exterior zips-strips for rescue access because they allow for window removal with less effort.

In the NPRM, FRA did not propose that the rule require the use of zip-strips for rescue access windows. Nevertheless, FRA did propose to recognize ''dual-function windows,'' which serve as both emergency exit and rescue access windows, through the use of zip-strips on both faces of the window. FRA has adopted this proposal in the final rule. As explained below, ''dual-function windows'' afford railroads additional flexibility in the location of their windows in that railroads are not required to find locations for emergency window exits distinct from the locations specified for rescue access windows, and vice-versa.

E. APTA's Standard for Emergency Evacuation Units

As FRA noted in the preamble to the final rule promulgating the Passenger Equipment Safety Standards, FRA has had under consideration a performance standard for emergency evacuation similar to that used in commercial aviation where a sufficient number of emergency exits must be provided to evacuate the maximum passenger load in a specified time for various types of emergency situations. *See* 64 FR 25550. FRA further noted that it would evaluate whether an APTA performance standard for emergency egress, then under development in APTA's PRESS Task Force, should be incorporated into FRA's standards. 64 FR 25551. FRA's intent is that such a performance standard would serve to supplement, as necessary, FRA's minimum requirements for emergency window exits and door exits.

In 1999, APTA issued APTA SS–PS–003–98, ''Standard for Emergency Evacuation Units for Rail Passenger Cars.'' This standard assigns to doors and window exits a numerical value, referred to as an ''emergency evacuation unit'' (EEU), that is intended to correlate to the speed and ease of passenger egress. Each emergency window exit is assigned an EEU of 1, and each door leaf an EEU of 2. The standard defines the ''usable exit path'' (UXP) as the number of emergency window and door exits that can be used by passengers after an incident that requires emergency egress from the vehicle, and provides that the UXP be calculated as ''the sum of EEUs for one side of the car less 50% of car end doors.'' The APTA standard also requires railroads to assign to each new passenger car a ''capacity exit factor'' (CXF), which is a value equal to the seating capacity of the car divided by 17 and rounded up to the next whole number, and to designate a sufficient number of exits to achieve a total EEU value equal to or larger than the CXF or the UXP.

Although the basic approach to establishing egress requirements based on car configuration and occupant capacity was widely accepted, during development of the APTA standard several organizations raised issues regarding the methodology for assigning EEU values to exits. For instance, Volpe Center staff suggested that point values for windows be reduced to numbers that are approximately in proportion to estimated passenger flow rates as compared with low-platform doors without steps, and that upper-level windows receive no credit toward the minimum EEU criterion but still be required to provide exit paths for certain rare accident scenarios. It was also questioned whether egress rates through windows could be half as great as through single-leaf doors, as implied by the standard.

The Task Force reviewed the APTA standard and recommended the continuation of evacuation test experiments and research to establish relative exit flow rates using different types of exits at distinct locations in the car, prior to considering adoption of the APTA standard into FRA's standards. To this end, the Volpe Center conducted a series of test experiments on commuter rail car evacuation in August 2005, and in April and May 2006, in Boston, MA, with the cooperation of the MBTA. Test experiments were conducted under normal and emergency lighting conditions, and evaluated three different ways of evacuating a car: Directly into an adjoining car; to a high platform using one or more side doors; and to a simulated, low platform using side doors with stairways. A report, which is in the process of being finalized, will document the results of these test experiments. (Due to safety concerns, it is not anticipated that test experiments will be conducted using windows as a means of emergency egress.) FRA does note that the emergency evacuation approach underlying the requirements in this final rule is consistent with the basic approach taken in developing APTA's standard, as the requirements do take into consideration both car configuration and occupant capacity.

IV. General Overview of Requirements

A. Emergency Window Exits and Rescue Access Windows

Among the most prominent issues identified for consideration by the Working Group were those involving emergency window exits and rescue access windows and how these windows relate to the emergency systems requirements overall. Emergency window exits are intended to supplement door exits, which serve as the preferred means of egress in an emergency situation, and provide an alternative means of emergency egress in life-threatening situations, should doors be rendered inaccessible or inoperable. Prior to this rulemaking FRA's regulations had required that each single-level car and each main level of a multi-level passenger car have a minimum of four emergency window exits, either in a staggered configuration where practical or with one exit located in each side of each end, on each level; that these windows be designed to permit rapid and easy removal during an emergency without the use of a tool or other implement; and that conspicuous photo-luminescent marking of the windows, as well as instructions for their use, be provided. FRA's regulations had also required that windows intended for rescue access be marked with retroreflective material, and that instructions for their use also be provided. However, FRA's regulations did not require any minimum number of rescue access windows for passenger cars.

One of the basic principles underlying the final rule's requirements for both emergency window exits and rescue access windows has been to locate these windows in such a manner that passengers would be able to exit from, and emergency responders would be able to gain direct access to, each passenger compartment without requiring that they first go to another level of a car or through an interior door. Optimally, there would be a sufficient number of windows for passengers to exit from, and for emergency responders to get access to, the following: (i) Every level with passenger seating of a multi-level passenger railcar; (ii) both sides of the passenger railcar, in the event of a derailment where the exits on one side are compromised; and (iii) each end (half) of the passenger railcar, in the event that one end is crushed or the exits on that end are otherwise rendered inaccessible or inoperable. A constraint for both new and existing intermediate levels of multi-level passenger car designs is that there is limited space for side windows due to the presence of bathrooms, equipment closets, and side door exits. Thus, the Task Force recommended making the requirements flexible and consistent with existing car designs and, in certain cases, providing for exceptions. The exceptions for new equipment are limited to situations that arise from the need to provide accessible accommodations under the Americans with Disabilities Act of 1990 (ADA) in compartments where there are no more than four seats and a suitable alternative is provided. The Task Force recommended greater flexibility for existing equipment to avoid costly window installations where none had previously existed (*e.g.*, relocating an electrical closet so that a space large enough to accommodate a new window could be cut into the side of the car).

During Task Force discussions, it became apparent that the phrase ''rapid and easy'' in the emergency window exit regulation was being interpreted in different ways by commuter railroads and car manufacturers. Some believed

that only the removal of the gasket had to be rapid and easy; however, FRA clarified that while FRA may have cited examples of gaskets that were becoming stuck and were therefore not removable in a rapid and easy fashion, the central goal of this provision is to create an opening that could be used for egress, which necessarily includes removal of the window panel as well. If the removal of the gasket is rapid and easy, but the removal of the window panel is not, the opening becomes less useful in an emergency situation, or in some cases, effectively non-existent. Several members of the Task Force also expressed their concern that the phrase ''rapid and easy'' was too subjective and not quantifiable. They requested that FRA adopt a more measurable performance-based standard instead. Yet, various proposals to do so based on a specific allotment of time to open the window were not adopted, as consensus was not reached on how that time would be determined. Variables such as a person's height, weight, strength, and awareness of emergency exit operation and procedures all could affect the ease of opening a window. For example, a railroad maintenance employee who installs emergency window exits or is otherwise trained on their use should be able to open a window more quickly than many passengers would be able to do. While there was general agreement that a time-performance standard should be based on the time taken by a representative sample of people to open the window, the Task Force was not in a position to specify that sample.

Although unsuccessful at reaching consensus on an actual measure of ''rapid and easy,'' the Task Force was able to agree that promoting ''rapid and easy'' removal of emergency windows is desirable. A combination of interior car fixtures, such as headrests and luggage racks, as well as larger and heavier windows, can create a situation where the most effective and efficient method for removing a window is not immediately apparent. As a step towards promoting rapid and easy removal of the window and to address the situation of particular concern, the Task Force recommended requiring that instructions specifically take into account potential hindrances. The instructions may be in written or pictorial format, since including pictorials depicting the window removal method as part of the instructions can be extremely helpful.

As for rescue access windows, the Task Force generally recommended requiring two windows on each level of a passenger car for rescue access (versus four as is required for emergency exit). The principal reason for requiring only two windows for rescue access is that rescue access windows are the third means of egress in the overall emergency evacuation approach, in which door exits serve as the first (preferred) means of egress and emergency window exits serve as the second. Rescue access windows have this tertiary role because they would be used as a means of last resort when passengers cannot evacuate themselves and require aid from emergency responders. The design of window gaskets also affects how many rescue access windows can be placed in a car, especially on levels where there is limited space for windows. For instance, on certain types of cars, zip-strips installed to facilitate rapid and easy removal of a window can be placed either on the interior or the exterior of the car, but not on both. In this case, if FRA were to require four rescue access windows, then a railroad that has cars with additional emergency window exits (*i.e.*, beyond the minimum of four per main level) would likely just replace some of its emergency window exits with rescue access windows, resulting in fewer emergency window exits, and thereby limiting the more preferred means of egress. For the above reasons, as well as for the cost of retrofitting existing equipment, flexibility for locating rescue access windows in side doors was added for existing equipment.

FRA did not propose, and the final rule does not make, any change to existing requirements for emergency window exits in sleeping compartments or similar private compartments. Yet, in establishing requirements for minimum numbers of rescue access windows in passenger cars, FRA is requiring that each sleeping compartment or similar private compartment in a passenger car have a rescue access window. FRA believes that this new requirement is consistent with current practice.

B. Emergency Communication Systems—PA and Intercom Systems

While the Passenger Equipment Safety Standards issued in 1999 by FRA contain requirements for two-way (*i.e.*, crew-to-passenger and passenger-to-crew) emergency communication systems for Tier II passenger equipment, FRA did not require that Tier I passenger cars be equipped with any emergency communication system. Nevertheless, most existing passenger cars are equipped with PA systems, and after discussing the benefits of PA systems in light of the challenge and expense of retrofitting older, existing passenger equipment with limited service life, the Task Force agreed that all passenger cars should, at a minimum, have functioning PA systems. A PA system allows the train crew to keep their passengers informed in an emergency situation and provide instructions to them in a timely manner. In particular, the train crew can provide instructions to passengers not to take an action that could place them in any greater danger, such as instructing them, as appropriate, to remain on the train and not endanger themselves by unnecessarily evacuating the train on their own.

The Task Force also agreed that emergency communication systems in all new passenger cars should include intercom systems that would enable passengers to quickly communicate in emergency situations with the train crew. During the discussions in developing the NPRM concerning whether to require intercom systems on Tier I passenger equipment, some Task Force members expressed concern that if intercom systems were added at each end of a car, were conspicuously marked, and had instructions provided for their use, passengers may use them in non-emergency situations. Amtrak and various commuter railroads that operate cars with intercom systems indicated that they have successfully implemented measures to deter misuse, however, such as by placing the intercom transmission button under a protective covering (which also prevents accidental operation by a passenger leaning against it) and by marking it ''FOR EMERGENCY USE ONLY''.

The emergency communication system requirements in this final rule generally reflect current practice for Tier I passenger equipment operating with PA and intercom systems and existing requirements for Tier II passenger equipment. FRA understands that those Tier I passenger cars that currently do not have PA systems are scheduled to be retired from service before the requirement to have PA systems on existing Tier I passenger equipment becomes effective.

C. Emergency Roof Access Locations

Emergency roof access locations (*i.e.*, roof hatches or structural weak points) can be especially useful in emergency situations where passenger cars have rolled onto their sides following certain collision and derailment scenarios. In such situations, doors, which are the preferred means of egress and access under normal circumstances, may be rendered inoperable due to structural damage to the door or the door pocket, or become extremely difficult to use because the car is no longer upright. Moreover, although emergency

responders may be able to enter a car that is on its side via a rescue access window, the removal of an injured occupant through a side window in such circumstances would likewise be difficult or complicated, especially depending upon the condition of the occupant.

FRA's 1999 final rule on Passenger Equipment Safety Standards required emergency roof access locations for Tier II passenger equipment, but not for Tier I passenger equipment. The Task Force examined both these requirements and the APTA PRESS recommended practice RP–C&S–001–98, ''Recommended Practice for Passenger Equipment Roof Emergency Access,'' in recommending that emergency roof access requirements be applied to Tier I passenger equipment. FRA adopted the Task Force's recommendation and, in general, is requiring that each new passenger car (both Tier I and Tier II) have a minimum of two emergency roof access locations. Existing Tier I passenger cars are not subject to the requirements, while existing Tier II passenger cars continue to be subject to existing requirements. For further discussion and explanation of the requirements, including the treatment of Tier II power cars, please see the Section-by-Section Analysis of this preamble at Section V.

D. Inspection, Testing, and Maintenance

This final rule amends §§ 238.17, 238.303, and 238.305 (which contain standards for movement of passenger equipment with other than power brake defects, for inspection of passenger equipment, and for repair of passenger equipment) by adding requirements for the inspection, testing, maintenance and repair of emergency communication systems, emergency roof access points, and rescue access markings. To allow railroads sufficient time to repair the equipment with minimal disruption to normal operations, however, flexibility is provided for operating equipment in passenger service with certain noncompliant conditions. In affording this flexibility, the final rule requires the railroad to adhere to specified procedures for the safe operation of the equipment.

V. Section-by-Section Analysis

This section-by-section analysis explains the provisions of the final rule and any changes made from the 2006 NPRM. Of course, a number of the issues and provisions involving this rule have been discussed and addressed in detail in the preceding discussions. Accordingly, the preceding discussions should be considered in conjunction with those below and will be referenced as appropriate.

Amendments to 49 CFR Part 223, Safety Glazing Standards—Locomotives, Passenger Cars and Cabooses

Subpart A—General

Section 223.5 Definitions

This section, which contains a set of definitions of terms used in part 223, has been modified to clarify the definition of one term and to remove the definitions of two terms that are no longer used in the part because of the removal of § 223.9(d)(2).

The definition of ''emergency window'' has been revised in this section, as well as in § 238.5 of this chapter, to clarify that the purpose of an emergency window is egress, and thus an emergency window needs to be removable only from the inside of a passenger car. Accordingly, FRA has revised the definition of ''emergency window'' to mean the segment of a side-facing glazing panel that has been designed to permit rapid and easy removal from inside a passenger car in an emergency situation. FRA has also removed the definitions ''emergency responder'' and ''passenger train service'' in accordance with the removal of § 223.9(d)(2), the only section in part 223 that referenced these terms. The definition ''emergency responder'' has been moved to part 238 of this chapter.

Subpart B—Specific Requirements

Section 223.9 Requirements for New or Rebuilt Equipment

In the discussion of § 223.5, FRA has noted that the definition of ''emergency window'' has been amended to clarify that the purpose of the windows is egress, and thus such a window would need to be removable only from the inside of a passenger car. Section 223.9(c) required ''at least four emergency opening windows.'' As the term ''emergency opening window'' was not specifically defined—but had been understood to mean ''emergency window''—FRA has modified the rule text in § 223.9(c) to require ''at least four emergency windows'' and restructured the section in order to provide more clarity.

FRA has removed § 223.9(d) and merged the requirements previously contained therein into §§ 238.113 and 238.114 of part 238. The requirements in § 223.9(d) had been added by FRA's May 4, 1998 final rule on Passenger Train Emergency Preparedness. *See* 63 FR 24629, 24643. The Passenger Train Emergency Preparedness final rule required the marking of both emergency window exits and windows intended for rescue access, and also required that instructions be provided for their use. However, the requirements applied only to ''each railroad providing passenger train service,'' a class of train service purposefully narrower than the general application section in part 223. *See* § 223.9. Because FRA has addressed marking and instruction requirements for such windows in this train service in part 238, and because the requirements of § 223.9(d) did not apply to other equipment covered by part 223, they have been removed from part 223, along with the corresponding definition of ''emergency responder'' and ''passenger train service.'' Further, removal of § 223.9(d) avoids creating any confusion due to duplication of the marking and instruction requirements in two different parts of the CFR, especially since the marking requirements in part 238 that have been adopted by FRA vary somewhat from the ones that were contained in § 223.9(d). Nevertheless, § 223.8 will continue to alert the reader to additional requirements for emergency window exits for ''passenger equipment'' in part 238, as defined in that part.

However, because the ''application'' section of part 223 is broader than that of part 238, FRA has been mindful not to alter the application of those part 223 requirements unaffected by the May 4, 1998 amendments. Part 238 does not apply to ''tourist, scenic, historic, or excursion operations, whether on or off the general railroad system of transportation,'' *see* § 238.3(c)(3); whereas, part 223 does not apply to ''locomotives, passenger cars and cabooses that are historical or antiquated equipment'' and are also ''used only for excursion, educational, recreational purposes or private transportation purposes,'' *see* § 223.3(b)(3). As a result of this, for example, tourist equipment that is covered by part 223 because the equipment is not historical or antiquated and is required to be equipped with certified glazing in all windows pursuant to § 223.9(c) or 223.15(c), is still required to have four emergency windows (emergency window exits), despite its exclusion from the part 238 requirements.

Appendix B to Part 223—Schedule of Civil Penalties

This appendix contains a schedule of civil penalties to be used in connection with this part. Because such penalty schedules are statements of agency policy, notice and comment are not required prior to their issuance. *See* 5 U.S.C. 553(b)(3)(A). Nevertheless, FRA

invited comment on the penalty schedule, but no comment was received.

FRA has amended the penalty schedule. As discussed above, FRA has merged the requirements of § 223.9(d) into §§ 238.113 and 238.114. Accordingly, FRA has modified the schedule of civil penalties in appendix B to part 223 by removing the entries for paragraphs (d)(1)(i), (d)(1)(ii), (d)(2)(i), and (d)(2)(ii) of § 223.9 and the associated penalties. FRA has also revised footnote 1 to clarify the use of penalty codes in the penalty schedule.

Amendments to 49 CFR Part 238, Passenger Equipment Safety Standards

Subpart A—General

Section 238.5 Definitions

This section, which contains a set of definitions of terms used in part 238, has been modified to include definitions of terms used in modifications to part 238.

FRA has added the definition of ''dual-function window'' to mean a window that is intended to serve as both an emergency window exit and a rescue access window. This term generally refers to a window that has a zip-strip, which is a strip in a window gasket that can be pulled from end to end to unlock the gasket and thus release the glazing, on both faces, so that it can be opened from both the inside of the car and the outside. (This definition also covers other methods of opening the same window from both the inside of the car and the outside.) The term has been added because it is referenced in § 238.114(a)(5) as an exception to the requirements on the location of rescue access windows set forth in § 238.114. Dual-function windows installed to meet the minimum requirements contained in § 238.113 are not required to meet the § 238.114 rescue access window location requirements, in order to recognize that a railroad that installs four compliant emergency window exits that are the dual-function type has also installed twice the number of rescue access windows required.

FRA has revised the definition of ''emergency window'' to clarify that the purpose of an emergency window is egress, and thus such a window needs to be removable only from the inside of a passenger car. Accordingly, FRA has amended the definition to mean the segment of a side-facing glazing panel that has been designed to permit rapid and easy removal from inside a passenger car in an emergency situation. FRA has also revised the definition of this term in § 223.5 for consistency and clarity.

FRA has added the definition of ''intercom'' to mean a device through which voice communication can be transmitted and received. A transmission unit normally has a button, which has to be pressed to begin transmission or notify the crew on the receiving end of the intention to communicate using the system. An intercom may be a telephone apparatus. FRA has also added the definition of ''intercom system'' (or ''intercommunication system'') to mean a two-way, voice communication system. This system allows a passenger to communicate with a crewmember, typically by pressing a button, or lifting a telephone handset, or both.

FRA has added the definition of ''intermediate level'' to mean a level of a multi-level passenger car that is used for passenger seating and is normally located between two main levels. An intermediate level normally contains two, separate seating areas, one at each end of the car, and is normally connected to each main level by stairs. The term ''intermediate level'' is intended to distinguish a level used for passenger seating of a multi-level passenger car from a ''main level'' of such a car, as FRA has applied different requirements to the different passenger seating levels. Please see the discussion of ''main level,'' below.

Previously, the regulatory text of part 238 did not define the term ''main level,'' as used in § 238.113. However, in the preamble to the April 23, 2002 final rule, FRA explained that the term ''main level'' was intended to exclude a level of a car that is ''principally used for passage between the door exits and passenger seating areas, or between seating areas,'' and noted that such an area is not ''principally used for seating'' and includes a stairwell landing. *See* 67 FR 19973. This distinction raised some concerns with respect to intermediate levels because their designation as main levels would hinge upon an interpretation of ''principally used'' for passenger seating. Some Task Force members believed that these levels were principally used for passenger seating because passengers who are seated there are spending more time on that level than the passengers who simply use that level to reach the upper level (or lower level). Others believed that the intermediate level was principally used for passage between levels because there was a greater volume of passengers passing through that level to reach the upper level (or passing through to reach the lower level, or both) than there were passengers seated on that level. In light of the concerns raised, FRA has defined ''intermediate level,'' as discussed above, and has also defined ''main level'' as a level of a passenger car that contains a passenger compartment whose length is equal to or greater than half the length of the car. This definition establishes a more direct relationship between the number of occupants on a level of a car and the number of emergency window exits required on that level. The longer a level is, the more seats and exterior side windows it is able to accommodate. Since passenger cars are normally about 85 to 90 feet in length, a main level in such a car would be a level that contains a passenger compartment whose length is approximately 42.5 feet or more. Accordingly, there should be sufficient space for the required number of emergency window exits on a main level of a passenger car, whether or not there is a bathroom, kitchen, or equipment closet located on the same level.

FRA has added the definition of ''PA system'' or ''public address system'' to mean a one-way, voice communication system. Such a system is used by train crew members to make announcements to passengers in both normal and emergency situations. Crew members may use the PA system to make routine station announcements as well as to communicate information regarding unusual occurrences, such as unexpected delays and emergencies. If a person requires immediate medical attention, the crew may also use the PA system to request assistance from someone onboard with medical training. Some PA systems have speakers located on the exterior of cars that are used to make announcements to persons in the vicinity of the train (*e.g.*, passengers on a station platform).

FRA has added the definition of ''passenger compartment'' to mean an area of a passenger car that consists of a seating area and any vestibule that is connected to the seating area by an open passageway. If a door separates the seating area from the vestibule, the vestibule is not part of the passenger compartment. *See* Figure 1c to subpart B. This definition was necessary to solidify the concept that passengers should not have to go through an interior door, which could get jammed, or to another level in order to reach an emergency window exit, and likewise, emergency responders should be able to directly access passengers in need of aid in each such compartment.

Consistent with the amendments to part 223, discussed above, FRA has defined ''rescue access window'' as a side-facing exterior window intended for use by emergency responders to gain

access to passengers in an emergency situation. In some passenger cars, all windows may be capable of serving as both emergency window exits and rescue access windows. However, a railroad may choose not to designate one or more of these windows for rescue access for various reasons, including the presence of a third-rail shoe that could pose an electrocution hazard, or a high seatback next to the window that may pose a potential hindrance to window removal for windows that are designed to open by being pushed into the car.

Some rescue access windows are designed with a zip-strip to release the window panel from its frame. In some cars, side-facing glazing systems are designed so that there is a zip-strip on only one side of the window panel. It is common for railroads to install such systems with a zip-strip on the exterior of the car for rescue access use, and also have one in the interior of the car for emergency egress use. However, to the extent that there may be only one zip-strip for a single glazing system, the railroad must decide whether to place the zip-strip on the exterior of the car for use in rescue access, or in the interior of the car for use in emergency egress.

Although use of zip-strips in rescue access windows is common, FRA makes clear that they are not required. The adopted definition is a performance standard, and a rescue access window may be opened by other means, such as by shattering the window (if glass) or by popping the window out by applying force at one corner.

Throughout the discussion of rescue access windows, Task Force members repeatedly emphasized, as the definition reflects, that these windows are intended for use by emergency responders to gain access to passengers in an emergency situation. In the process of reviewing the definitions in parts 223, 238, and 239 in composing the NPRM and this final rule, FRA noted that the term ''emergency responder'' was defined in parts 223 and 239, but not in part 238. As the adopted part 238 definition of ''rescue access window'' includes the term ''emergency responder,'' FRA believed it was appropriate to add the definition of ''emergency responder'' to part 238. The term has been defined to mean a member of a police or fire department, or other organization involved with public safety charged with providing or coordinating emergency services, who responds to a passenger train emergency.

FRA has added the definition of ''retroreflective material'' to mean a material that is capable of reflecting light rays back to the light source and that conforms to the specifications for Type I Sheeting, as specified in ASTM International's (ASTM) Standard D 4956–07, ''Standard Specification for Retroreflective Sheeting for Traffic Control.'' ASTM International defines Type I Sheeting as ''medium-intensity retroreflective sheeting referred to as 'engineering grade' and typically enclosed lens glass-bead sheeting,'' and FRA has incorporated the ASTM definition by reference. This newly added definition is consistent with the definition and requirements for retroreflective material markings for doors, windows, and roof locations intended for rescue access contained in APTA Standard SS–PS–002–98, Rev. 3, ''Standard for Emergency Signage for Egress/Access of Passenger Rail Equipment.'' (As discussed further in the Section-by-Section Analysis, Revision 3 of this Standard was authorized by APTA on October 7, 2007.) FRA notes that this APTA standard also requires that the retroreflective material be tested according to ASTM's Standard E 810–03, ''Standard Test Method for Coefficient of Retroreflective Sheeting Utilizing the Coplanar Geometry.''

FRA has added the definition of ''seating area'' to mean an area of a passenger car that normally contains passenger seating. An area with no actual seats but with anchors for securing wheelchairs is considered a seating area.

FRA notes that the term ''vestibule'' is defined in part 238 to mean an area of a passenger car that normally does not contain seating and is used in passing from the seating area to the side exit doors. Although FRA has not revised the definition of ''vestibule,'' FRA makes clear that for purposes of part 238, a vestibule may be located anywhere along a car. The location of a vestibule is not restricted to the far ends of a car but may be elsewhere, such as in the middle of the car. As a result, what some in the passenger rail industry commonly refer to as an entranceway, by virtue of where it is located in a car, it is considered a vestibule for purposes of this part.

Section 238.17 Movement of Passenger Equipment With Other Than Power Brake Defects

This section contains the requirements related to the movement of passenger equipment with a condition not in compliance with part 238, excluding a power brake defect, without civil penalty liability under this part. FRA has modified paragraphs (b) and (c) of this section to include a reference to the specific provisions added to the exterior calendar day mechanical inspection in § 238.303(e)(18) regarding rescue-access-related markings, signage, and instructions. Section 238.303(e)(18) requires that all rescue-access-related exterior markings, signage, and instructions required by § 238.114 (rescue access windows) and § 239.107(a)(2) (door exits intended for emergency access) be in place and, as applicable, conspicuous, and/or legible, and that certain conditions be met for continued use of the cars with defective markings, signage, or instructions. As these provisions contain specific requirements related to the continued use in passenger service of passenger cars found with defective rescue access signs, markings, or instructions, recognition of these specific limitations is included in both paragraphs (b) and (c) of this section. The requirements in § 238.303(e)(18) and the conditions for continued use of passenger equipment with non-complying conditions are discussed in detail, below.

In the NPRM, FRA noted that it was considering moving the emergency exit marking requirements contained in § 239.107(a) into part 238, and FRA invited comment on whether FRA should do so in the final rule. FRA explained that since § 239.107(a) contains requirements for door exit marking, signage, and operating instructions, the requirements of that section may more logically be situated in the very sections containing requirements for door exits in part 238, namely, §§ 238.235 and 238.439. However, no comment was received on this matter, and the Task Force advised that it is not necessary to move these requirements into part 238 at this time. The Task Force noted that it would be advisable to consider incorporating by reference the APTA standard containing more specific requirements for emergency exit markings in a future rulemaking, instead of making non-substantive changes concerning where these requirements are currently stated in the CFR. FRA agreed with the Task Force's recommendation, and has left the rule unchanged in this regard at this time.

Subpart B—Safety Planning and General Requirements

Section 238.113 Emergency Window Exits

Prior to this final rule, this section contained requirements for emergency window exits in single-level passenger cars and in main levels of multi-level passenger cars only. Again, emergency window exits are intended to

supplement door exits, which are normally the preferred means of egress in an emergency situation. Emergency windows provide an alternative means of emergency egress should doors be rendered inoperable or inaccessible. They also provide an additional means of egress in life-threatening situations requiring very rapid exit, such as a fire on board or submergence of the car in a body of water.

To ensure that emergency window exit requirements apply to every level with passenger seating, FRA has revised this section expressly to include emergency window exit requirements for any level with passenger seating in a multi-level passenger car. FRA has also revised this section to require that emergency window exit operating instructions specifically address the presence of interior fixtures that may hinder the removal of the window panel, to facilitate its rapid and easy removal.

Paragraph (a). Paragraph (a), which applies to both new and existing passenger cars, has been modified to specify requirements for the number and location of emergency window exits on any level with passenger seating in a passenger car. The requirements for single-level passenger cars in paragraph (a)(1), and for main levels of multi-level passenger cars in paragraph (a)(2), have largely remained unchanged from the May 12, 1999, final rule in which they were adopted (64 FR 25540, 25673). Under the 1999 final rule, single-level passenger cars were required to have a minimum of four emergency window exits, located ''either in a staggered configuration where practical or with one located in each end of each side of each level.'' FRA has slightly modified this language by replacing the word ''end'' with ''end (half)'' to clarify that the term ''end'' does not refer to the extreme forward and rear ends of a car, but merely the front and rear halves of the car. *See* Figure 1 to subpart B. Additionally, the text has been reorganized to emphasize that a window is required in each end (half) of each side of the car and that, if practical, the windows are also to be in a staggered configuration. This clarification removes any ambiguity in the former rule text that wrongly suggested that one could choose to simply stagger the location of the windows without regard to having one window in each side of each end.

FRA notes that Caltrans submitted a comment on the requirement that the emergency window exits be in a staggered configuration, where practical. In its comments, Caltrans stated that its *California* cars, which are bi-level, have emergency window exits that are not in a staggered configuration, but rather ''located symmetrically on each side of the vehicle''—*i.e.*, on both sides directly across from each other. Caltrans also stated that the cars have eight emergency window exits in the upper level, twice as many emergency window exits than it believed were required under the rule. Nevertheless, Caltrans expressed concern that the emergency window exit configuration was not compliant with the requirement for staggering their location where practical, and requested that the rule make clear that for cars where the number of emergency window exits exceeds the minimum required for each side and each half of the car, the staggering of the emergency window exit locations is not required.

Caltrans also stated in its comments that its *Surfliner* cars, which are also bi-level, have 23 emergency window exits on the upper level of each and at least four on the lower level of each car. In effect, every window frame in such cars contains an emergency window exit. As a result, Caltrans expressed concern that it would possibly have to eliminate emergency window exits in order to located them in a staggered configuration.

FRA referred these comments to the Task Force for discussion and its recommendation. FRA expressed its views on Caltrans' comments and the Task Force agreed that Caltrans' cars were in compliance with the emergency window exit location requirements and that no change in the rule text is necessary. The Task Force also agreed with FRA's recommendation that, instead of modifying the rule, the preamble to this final rule clarify the intent and application of the emergency window exit location requirements.

FRA emphasizes that a railroad is not required to stagger the location of emergency window exits when it is not practical to do so. Further, FRA makes clear that the requirement to stagger their location is principally a concern in a situation where only the minimum number of emergency window exits is present so as to maximize the rate of egress. That is, train occupants would not otherwise have to crowd the same two areas to escape out of a window where the minimum number of emergency window exits are paired across from one another, *i.e.*, paired symmetrically with respect to the longitudinal centerline of the car. Yet, where more than the minimum number of required emergency window exits are present, train occupants have more window exits to escape through, and there is less concern that any one location would be crowded. Having examined Caltrans' *California* and *Surfliner* cars, and considered the number of emergency window exits present in each car, FRA believes that the cars are in compliance with the location requirements for emergency window exits.

FRA does not believe it necessary to modify the final rule, however, especially since factors other than the number of emergency window exits need to be taken into account in deciding whether it is practical to stagger their location. Instead, FRA is providing the following examples of instances where it may not be practical to stagger the location of emergency window exits. For example, if a car has a symmetrical seating arrangement that includes face-to-face seating with tables or workstations in between, a railroad may decide to configure emergency window exits symmetrically with respect to the longitudinal centerline of the car. Face-to-face seating arrangements usually provide sufficient clear space for locating emergency window exits such that they are free of obstruction or potential hindrance by high seatbacks and thus may be more rapid and easy to operate in an emergency situation. Railroads may also decide not to stagger emergency window exits to avoid creating potentially hazardous situations such as would exist if an emergency window exit were located immediately above a third-rail shoe that could pose an electrocution hazard. In other instances, the presence of a rescue access window that does not also serve as an emergency window exit, the size of a window, or a combination of these, could make staggering the location of emergency window exits not practical.

To illustrate the requirements of paragraph (a)(2), FRA has added Figure 1, as referenced above. FRA had invited comment in the NPRM on whether this and other figures proposed in the NPRM for inclusion in part 238 would be helpful in understanding the requirements of this part, and, if so, whether any additional figures should be included. FRA also noted that the proposed figures, which were not drawn to scale, represented possible ways of complying with the proposed requirements and should not be construed as depicting the only way to comply. While no written comments were received on this issue, both the Task Force and the Working Group recommended that FRA retain these figures in the final rule. FRA has decided to include the figures in the final rule as proposed.

Paragraph (a)(3) contains the new requirements for emergency window exits on non-main levels with seating areas of multi-level passenger cars, including intermediate (or mezzanine) seating levels. The general intent of the paragraph is to have at least one emergency window exit that is accessible to passengers in each side of a passenger seating area without requiring the passengers to move to another level of the car or pass through a door. This will help ensure that, if a car rolls onto its side or if there is a hazard on one side of the train, an emergency window exit on the opposite side will be available to passengers and crew members for emergency egress. Nevertheless, as further discussed below, a constraint for intermediate levels of both new and existing multi-level passenger car designs is limited space due to the presence of bathrooms, equipment closets, and side door exits. Accordingly, the requirements for the number and location of emergency window exits in paragraph (a)(3) provide flexibility for, and are consistent with, existing passenger car designs.

FRA notes that in light of adding the new definition of ''main level,'' some passenger cars will no longer have main levels. Such cars will thus be subject to the requirements for other levels with seating areas contained in paragraph (a)(3). For instance, none of the levels in a gallery-style car (a multi-level passenger car with a full-height, enclosed vestibule in the center) meet this definition of a ''main level.'' Yet, each of the four, separate seating areas in such a car is subject to the emergency window exit number and location requirements adopted in paragraph (a)(3). Further, the requirements of paragraph (a)(3) are consistent with the number and location of emergency windows on existing gallery-style passenger cars, will not impact current operations, and will not diminish the effect of FRA's existing requirements.

Paragraph (a)(3)(i) of the final rule, which applies to both new and existing passenger cars on or after August 1, 2009, generally requires that non-main levels that are used for passenger seating have at least two emergency window exits that are accessible to passengers in each seating area without requiring the passengers to move to another level of the car or pass through an interior door. This provision is intended to address situations in which stairways could become structurally deformed and interior doors could be rendered inoperable as a result of a collision, derailment, or other accident, obstructing access to an emergency window exit or a side door exit on another level or in a vestibule area that is separated from the seating area by an interior door. Similarly, the provision is intended to address situations in which a passenger car rolls onto its side as a result of a collision, derailment, or other accident, by providing that at least one of these emergency window exits be required in each side of the passenger car, except as provided below. *See* Figures 2, 2a, and 2b to subpart B.

This provision also permits an emergency window exit to be located within an exterior side door in the passenger compartment of a non-main level, if it is not ''practical'' to place the window exit in the side of the seating area. It should be noted that, by definition, a side door is not considered to be located within the ''passenger compartment'' if an interior door separates the seating area from the area where the side door is located. The provision requires that there be an open passageway between the seating area and the vestibule, in such a circumstance. Use of the word ''practical'' allows railroads and car builders some discretion regarding the location of an emergency window exit in a non-main level of a car. For instance, this provision could be used to address situations where a window in a door in the same passenger compartment may be better suited for emergency egress than one in the seating area. In some cars, removal of the windows in the seating area may be hindered by seatbacks or other fixtures, while windows in the exterior side doors could potentially be more easily and rapidly removed. Since there would still be two accessible side windows in a passenger compartment, one on each side, there is no limitation on the number of seats that may be in the compartment. Moreover, the door itself is a means of emergency egress that, if operable, would allow more rapid and safe egress than exiting through a window. Nevertheless, because having two emergency exits at the very same location could result in both exits being rendered inoperable (as by car crush) or inaccessible (as by fire), FRA decided not to allow the unrestricted placement of emergency window exits in side doors. FRA makes clear that, all things being equal, emergency window exits should be placed in a location separate from side door exits. *See* Figure 2b to subpart B; compare to Figure 2a to subpart B.

In determining the appropriate applicability date for the requirement to have emergency window exits in non-main levels of multi-level passenger cars, it was noted that, while some passenger cars already have windows in each side of an intermediate-level seating area, these windows are not necessarily emergency window exits. Consequently, some time would be needed to change out the existing windows with emergency window exits or otherwise retrofit the windows with pull-handles and make any other modification necessary so that the windows would meet the requirements for emergency window exits. The final rule takes this concern into account, and otherwise affords railroads sufficient time to come into compliance, regardless of the state of the existing windows, by not making the requirement applicable until 18 months after publication of the final rule.

Paragraph (a)(3)(ii) contains an exception for non-main levels of both new and existing multi-level passenger cars. It requires only one emergency window exit in a seating area in a passenger compartment with no more than four seats, if it would not be practical to place an emergency window exit in a side of the passenger compartment due to the need to provide accessible accommodations under the ADA and a suitable, alternate arrangement for emergency egress is provided. This exception would address concerns involving multi-level passenger cars serving passenger stations with high-platforms, such as on the Northeast Corridor. Because all passengers enter these cars on the intermediate level, and disabled passengers are not able to access accommodations on another level of the cars, any accommodations provided to passengers are located on the intermediate level. The final rule recognizes this fact, and the exception applies to both existing and new passenger cars. However, the exception is limited to situations that arise from the need to provide accessible accommodations under the ADA, as well as limited to those seating areas in passenger compartments where there are no more than four seats and where a suitable alternate arrangement for egress is provided. Use of the word ''practical'' in paragraph (a)(3)(ii) is intended to extend flexibility to car builders to locate an electrical locker or other equipment closet in a side of an intermediate level at one end of a passenger car without being required to place an emergency window exit in the same side at that location, provided the placement of the locker or closet is related to placement of ADA-accessible accommodations in the intermediate level at the other end of the car. The limitation concerning the maximum

number of seats in the passenger compartment is consistent with the maximum number of seats in existing designs for cars that are being manufactured with emergency window exits in only one side of each passenger compartment in an intermediate level.

In requiring that a suitable, alternate arrangement for emergency egress be provided, such an arrangement must not require the use of a tool or implement to operate, and must be comparable to an emergency window exit in terms of being rapid and easy to use. As part of the Task Force's discussion during the development of the NPRM, Kawasaki presented a car design with a seating area separated from a vestibule by an interior door and an alternate arrangement for emergency egress to address having a distinct emergency window exit on only one side of the seating area. (A copy of this design has been placed in the docket for this rulemaking.) The interior door is designed with a removable window panel (with pull-handles on both sides) to allow passengers access to the vestibule in the event the door itself were inoperable. Further, once a passenger accesses the vestibule, there are two exterior side doors in the vestibule, one on each side, that each contain an emergency window exit. As a result, in this design, a means of exiting the car from the side that lacks the distinct emergency window exit is available to passengers.

A combination of several factors makes this type of arrangement depicted by Kawasaki a suitable, alternate arrangement for emergency egress. First, the alternate emergency exit location provides a measure of redundancy, *i.e.*, a safety factor, in that there are an exterior side door and an emergency window exit in the same door. The door, if operable, allows passengers and crewmembers to exit more expeditiously than through a window. In the event that this door is rendered inoperable, a window meeting the minimum dimension requirements in paragraph (c) is available. To the extent that both the door and its window are inaccessible or inoperable, and the side door exit on the opposite side of the vestibule is also inaccessible or inoperable, the exterior side door exits in the adjacent car's vestibule are then next in sequence for use, since this car design has no end-frame doors separating adjoining cars. In fact, should the end of the car become uncoupled from the adjacent car, the vestibule would be open at the end, allowing passengers direct access to the outside. Regarding the removable panel in the interior door leading to the vestibule, it should be noted that it is designed to be polycarbonate, rather than glass, making it significantly lighter, and thus easier to remove than a glass panel. Further, the opening created by removing the panel is large enough for a person to pass through it relatively quickly.

Paragraph (a)(3)(iii) requires passenger cars that were both ordered prior to April 1, 2009 and placed in service prior to April 1, 2011 to have a minimum of only one emergency window exit in a non-main level seating area in a passenger compartment with no more than eight seats, if it is not ''practicable'' to place a window exit in a side of the passenger compartment (due to the presence of a structure such as a bathroom, electrical locker, or kitchen). This exception is broader than the one in paragraph (a)(3)(ii), as it applies to non-main levels with more seats and is not dependent on providing accessible accommodations under the ADA. However, it does not apply to new cars. New car designs must take into consideration the need to provide an emergency window exit in each side of a passenger compartment.

Use of the word ''practicable'' limits railroad discretion so that a car subject to this paragraph is required to have an emergency window exit in a side of a seating area, if a window suitable for such use is already located there. Nevertheless, FRA notes that a railroad is under no obligation to install a window in a side of a passenger compartment for purposes of providing an emergency window exit under this paragraph, if an emergency window exit is located in either (i) the other side of the same compartment or (ii) an exterior side door located in the same side of the compartment. Cutting through a side panel in an existing passenger car to install an emergency window exit is not required.

Requirements for cars with sleeping compartments or similar private compartments have been clarified and moved from former paragraph (a)(2) to new paragraph (a)(4). Each level of a passenger car with a sleeping compartment or a similar private compartment intended to be occupied by a passenger or train crewmember continues to be required to have at least one emergency window exit in each such compartment. A private seating area (such as found on certain European trains or on some antiquated American trains) is a private compartment. FRA notes that, in a passenger car with only sleeping compartments, if all the sleeping compartment doors are locked, passengers in a compartment without an egress window would not be able to get into another compartment to use an emergency window exit. The rule clarifies that, for purposes of this paragraph, a kitchen, locomotive cab, or bathroom—whether public or private—is not considered a ''private compartment,'' however. In particular, a bathroom is not considered a ''private compartment'' for purposes of this requirement because a bathroom should normally be located either in a sleeping compartment or in a passenger compartment, both of which are subject to emergency window exit requirements. As a result, a passenger should have access to an emergency window exit upon exiting a bathroom.

Paragraph (b). As part of the revision and reorganization of this section, paragraph (b) contains the same requirements for ease of operability of emergency window exits that were stated in former paragraph (a)(3) of the regulation. The only modification is that the applicability date of November 8, 1999, which was stated in the introductory text of paragraph (a), has been added directly to this paragraph (b). FRA notes that the Task Force considered alternatives to the existing standard for the ease of operating emergency window exits—one that would be capable of more objective quantification. One such alternative that was considered involved specifying a maximum pull-force for removing window gaskets and glazing, but the Task Force found it difficult to specify a uniform standard that would account for varying operating environments and weather conditions. Further discussion relating to the requirements of paragraph (b) is found below in the paragraph discussing the requirements for marking emergency window exits.

Paragraph (c). Consistent with the reorganization and revision of this section, FRA has moved existing requirements for the dimensions of emergency window exits from former paragraph (b) to paragraph (c). The applicability date of the dimension requirements is unchanged from former paragraph (b); thus, the requirements continue to apply to each passenger car ordered on or after September 8, 2000, or first placed in service on or after September 9, 2002. FRA has slightly modified the requirements to allow an emergency window exit with an unobstructed opening of at least 24 inches horizontally by 26 inches vertically to be located within an exterior side door, in accordance with the requirements of paragraph (a)(3)(i) of this section, as discussed above. FRA makes clear that, for purposes of determining compliance with the emergency window exit dimension requirements, the dimensions of the

unobstructed opening are measured after the emergency window exit has been opened. For example, the transparent area of the window for viewing use by passengers or train crew members may be several inches smaller than the opening created once the window is removed, and that would be acceptable, as long as the opening satisfies the dimension requirements.

The 1999 Passenger Equipment Safety Standards final rule required that an emergency window exit in a passenger car ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002, have an unobstructed opening with minimum dimensions of 26 inches horizontally by 24 inches vertically. Prior to the promulgation of this requirement, FRA had not specified the dimensions of emergency window exits. As a result, in the August 2006 NPRM, FRA stated that a window exit in such a passenger car that does not create an unobstructed opening meeting these minimum dimension requirements may *not* be considered an ''emergency window exit'' for purposes of this section and may not be marked as an ''emergency window exit.'' See 71 FR 50288. Yet, FRA noted that it did not believe it necessary to modify or remove such a window exit, provided the passenger car containing the window exit is otherwise in compliance with all applicable emergency window exit requirements. *Id.*

For example, FRA is aware of window exits that are not capable of creating openings of the required dimensions because of the presence of seatbacks that do not manually recline and may, therefore, obstruct passage through the window of a stretcher or an emergency responder with a self-contained breathing apparatus but not necessarily a passenger or crewmember. Certain emergency window exit designations appear to have been made independently of interior seat configurations, and this has resulted in the expense of relocating emergency window exit locations post-delivery. However, FRA does not intend to discourage a railroad from retaining these additional window exits in its passenger cars, even if they would not create openings of the required dimensions, out of the agency's concern for circumstances such as those present in the derailment of an Amtrak train near Mobile, AL, in September 1993. There, after a barge had struck and displaced a railroad bridge, an Amtrak train traversing the bridge derailed and fell into a bayou, drowning 42 passengers and two crewmembers, and killing three other crewmembers located in the lead locomotive. In what has been the Nation's deadliest passenger train accident in over 50 years, train occupants needed to evacuate as quickly as possible from cars filling with water, potentially making the number of window exits more critical than their precise dimensions. (FRA is not suggesting that the cars lacked a sufficient number of exits; nor is FRA suggesting that their exits' dimensions were too small. FRA is citing this incident to show that circumstances can exist where there may be extreme urgency to exit a passenger car.)

FRA invited comment on the issue of window exits in passenger cars ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002, that have window exits not meeting the minimum dimension requirements. FRA specifically invited comment on whether these window exits should be removed—*i.e.*, replaced with conventional windows—and, to the extent that they should not be removed, whether any instructional marking on these windows should be permitted. Since these windows could be used for emergency egress if they are not removed, FRA also invited comment as to whether they should have to be tested periodically to ensure that they operate properly. FRA noted that railroads are currently required to test emergency window exits no less frequently than every 180 days using commonly accepted sampling techniques to determine how many windows to test. See § 239.107 of this chapter. In general, these sampling techniques require that the greater the percentage of window exits that a railroad finds defective in a sample, the greater the percentage of windows that the railroad has to test in total (*i.e.*, the number of windows that need to be tested is adjusted upward when defects are found). Specifically, sampling should be conducted to meet a 95-percent confidence level that no defective units remain and be in accord with either Military Standard MIL–STD–105(E), ''Sampling for Attributes,'' or American National Standards Institute (ANSI)/ASQC Z1.4–1993, ''Sampling Procedures for Inspections by Attributes.'' (FRA notes that MIL–STD–105(E) was formally cancelled by the U.S. Department of Defense on February 27, 1995. The cancellation notice stated that future acquisitions should refer to acceptable non-Government standard sampling procedures and tables for inspection by attributes, such as ANSI/ASQZ Z1.4–1993.)

FRA also noted that, although testing these window exits would appear desirable, a testing requirement may discourage railroads from retaining these window exits at all.

The Task Force considered these issues and, for passenger cars ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002, recommended allowing railroads to designate as ''additional'' emergency window exits those windows that provide an unobstructed opening that is smaller than 24 inches vertically by 26 inches horizontally but that would still be suitable for use in an emergency. The Task Force further recommended that such ''additional'' emergency window exits be marked for emergency exit, have instructions provided for their use, and be tested in the same manner as the emergency window exits designated for purposes of complying with the minimum number requirements of this section 238.113.

FRA agrees with the recommendation of the Task Force and has revised paragraph (c) accordingly. There are now two exceptions to the requirements concerning dimensions, and they are contained in newly added paragraphs (c)(1) and (c)(2). The first exception, which was originally proposed in the NPRM as part of the text of paragraph (c), is that an emergency window exit located within an exterior side door in accordance with paragraph (a)(3)(i) of this section, may have an unobstructed opening with minimum dimensions of 24 inches horizontally by 26 inches vertically, rather than 26 inches by 24 inches. The second exception addresses the dimensions of ''additional'' emergency window exits. It provides that any additional emergency window exit, beyond the minimum number required by paragraph (a) of this section, that has been designated for emergency use by the railroad need not comply with the minimum dimension requirements in paragraph (c) of this section, but must otherwise comply with all applicable emergency window exit requirements. Under this new section, there is no obligation for a railroad to designate any such ''additional'' emergency window exits not meeting the minimum dimension requirements, in the same way that there is no obligation for a railroad to have more than the minimum number of emergency window exits that comply with the dimension requirements. Nevertheless, when a railroad does seek to have in its passenger cars more than the minimum number of emergency window exits, FRA encourages the railroad to follow the dimension requirements for those additional

window exits as well, all things being equal.

In those circumstances where any additional emergency window exit cannot meet the dimension requirements, namely in the case of an existing passenger car where the seating configuration causes a seatback to obstruct part of the opening, but the window exit is still considered suitable for use in an emergency to exit the car, the railroad may designate it as an ''additional'' emergency window exit. FRA notes that while a railroad will most often designate an additional emergency window exit by marking it for use, designation could also occur by design (*i.e.*, if a pull handle is present) or by written or verbal notice to passengers as part of the railroad's passenger safety awareness program.

FRA chose not to adopt a similar exception to the dimension requirements for rescue access windows because the additional rescue access windows are not likely to be as useful in an emergency situation requiring immediate evacuation (*e.g.*, to escape water, smoke or fire) as additional emergency window exits. This also helps to ensure that there will be no confusion as to whether or not the rescue access window is of the appropriate size to accommodate an emergency responder equipped with breathing equipment and a standard-sized stretcher. To the extent that emergency responders use emergency window exits to evacuate passengers (*e.g.*, if a responder chose to enter through an already-opened emergency window exit rather than going through the process of pulling open a rescue access window), FRA expects that the training made available to emergency responders on affected railroads would include discussion on the fact that some of these window openings may have smaller dimensions than those required for the minimum number of emergency window exits specified in paragraph (a). At the same time, the Task Force also recognized that emergency responders are well-trained and should be able to determine whether a window opening is large enough to accommodate a stretcher.

Paragraph (d). As the final part of the reorganization and revision of this section, paragraph (d) has been added and contains the requirements for marking emergency window exits, as well as providing operating instructions for their use. Marking and operating instruction requirements for emergency window exits were formerly contained in § 223.9(d)(1) of this chapter, and were referenced in paragraph (c) of this section. The requirements in § 223.9(d)(1) have been to moved to paragraph (d) of this section and modified. Paragraph (d) requires that each emergency window exit be conspicuously marked with luminescent material on the inside of each car, and that legible and understandable operating instructions, including instructions for removing the window panel, be posted at or near each such window exit.

Notably, paragraph (d) specifically requires that emergency window exit operating instructions address potential hindrances to removal of the window panel due to the presence of fixtures in the car. As discussed above, FRA became aware that the phrase ''rapid and easy'' in the requirement for emergency window exit ease of operability was not being interpreted uniformly. Central to the issue was the actual removal of the window panel in light of the weight of the window panel and the presence of interior fixtures near the window. It is not uncommon for a seatback to be located adjacent to an emergency window exit and for a luggage rack to be located above the exit. Even if the seatback does not affect compliance with the dimensions required for an unobstructed opening (especially in the case of a large window panel), it could, together with the presence of the luggage rack, hinder removal of the window. This combination of fixtures could create a situation where the most effective and efficient method for operating an emergency window exit would not be immediately apparent to a passenger, especially if the window were large and heavy. As a result, to promote the rapid and easy removal of the window panel, the Task Force recommended requiring that emergency window exit operating instructions specifically take into account such potential hindrances. Accordingly, if removal of a window (whether it is one of the minimum number required or an ''additional'' emergency window exit) may be hindered by the presence of a seatback, headrest, luggage rack, or other fixture, the instructions must state the method for allowing rapid and easy removal of the window panel, taking into account the fixture(s). This particular portion of the instructions may be in written or pictorial format to provide railroads the flexibility to convey the appropriate information to passengers, especially since a picture (pictogram) or pictures (pictograms) may potentially convey the information more readily than written instructions.

FRA also notes that former § 223.9(d)(1) required that the operating instructions for emergency window exits be ''clear and legible.'' FRA has modified this requirement by replacing the word ''clear'' with the word ''understandable,'' so that railroads are required to post ''legible and understandable'' operating instructions. Use of the word ''clear'' in former § 223.9(d) had created some confusion since it can have more than one meaning, and FRA believes this amendment eliminates any further confusion.

Finally, FRA notes that existing requirements in parts 223 and 239 for the marking of emergency exits, as well as existing requirements in part 238 for the marking of emergency communications transmission points, specify the use of luminescent materials. (Door exits intended for emergency egress may also be lighted, in accordance with § 239.107(a)(1).) Part 238 defines ''luminescent material'' as material that absorbs light energy when ambient levels of light are high and emits this stored energy when ambient levels of light are low, making the material appear to glow in the dark. *See* § 238.5. Paragraph (d) continues to require that luminescent material be used to mark emergency window exits. However, as further discussed below, the Task Force has considered incorporating an APTA standard that would establish specific criteria for this material, including how bright the material must be and how long the material must stay luminescent.

FRA's requirements to mark emergency window exits and other emergency exits originated with FRA Emergency Order No. 20. *See* 61 FR 6876, (Feb. 22, 1996); and 61 FR 8703 (Mar. 5, 1996). Among its provisions, the emergency order required that ''no later than April 20, 1996, commuter and intercity passenger railroads ensure that each emergency exit location is marked inside the car for passenger and crew information.'' In an effort to respond to this requirement as effectively as possible within the short timeframe required, affected railroads began to install photo-luminescent emergency exit markings that were available at the time. Many railroads installed signs made of zinc-sulfide, which were capable of providing luminance only for a period of less than 10 minutes in many cases. Subsequently, photo-luminescent sign technology evolved, and other materials began to be used, such as strontium-aluminate, which is capable of providing high levels of luminance for much longer periods. Prices for such signage also decreased, making the cost of such ''high-performance, photo-luminescent'' (HPPL) signs comparable to that of the

signs installed initially. Thus, in 1999, APTA issued APTA SS–PS–002–98, ''Standard for Emergency Signage for Egress/Access of Passenger Rail Equipment,'' requiring the use of HPPL materials for all newly-installed, passive emergency-exit signs and for the retrofit of existing cars at their remanufacture. According to Revision 2 of this APTA standard, issued in 2003, following a charge of five foot-candles for one hour, installed photo-luminescent markings had to emit not less than a minimum of 7.5 milli-candela per square meter (7.5 mcd/m^2) for 90 minutes after removal of the charging source. The APTA standard set the duration period of 90 minutes to correspond with the 90-minute duration requirement for emergency lighting contained in § 238.115 for new passenger cars, which affords a reasonable amount of time for passengers and crew members to wait for the arrival of emergency responders to remote accident sites. Depending on the circumstances, it could take more than an hour for crewmembers to evaluate an emergency situation, coordinate with the control center and emergency responders, notify passengers of the appropriate action(s) to take, and if necessary, begin to evacuate the train. In conditions of darkness, a brighter sign is more easily recognizable and facilitates identification of emergency exits.

As noted, the Task Force has focused on revisions to this APTA standard for purposes of incorporating it into FRA's regulations. FRA considered incorporating elements of the APTA standard into this final rule so that emergency exit signs and intercom markings in passenger cars would be required to be made of HPPL material, and FRA invited comment on doing so. *See* 71 FR 50289. Although no written comments were received, the Task Force discussed at length issues associated with the development of HPPL material component requirements. One of the most difficult issues the Task Force addressed was the extent to which such requirements should apply to photo-luminescent signs and markings already installed in passenger cars. Task Force members were particularly concerned that lighting levels in enclosed vestibule areas in existing cars were not bright enough to charge photo-luminescent signs already in place such that they could meet the level of luminance required by the APTA standard. Field studies and laboratory tests revealed two issues: (1) In many cases, the levels of light in vestibules and other small areas were inadequate for photo-luminescent signs to perform as required by the APTA standard; and (2) sufficiently accurate off-axis illuminance measurements cannot be taken without the use of light meters especially designed to take such measurements—certain commonly available light meters are not designed for such a purpose.

FRA notes that the Task Force separately proposed revisions to the APTA standard to (1) allow flexibility for use of different types of charging light sources, (2) require that new HPPL signs meet the same luminance requirements with lower charging light levels, (3) allow alternative testing criteria using meters that do not measure off-axis illuminance accurately, (4) grandfather signs that are likely to perform as intended for 60 minutes, and (5) in small areas, to allow lower levels of luminance or use of larger signs to compensate for even lower light levels. The Task Force advised that requirements in the APTA standard for HPPL were very detailed and complex and not readily transferable directly into this final rule. Therefore, the Task Force recommended incorporating such requirements by reference into the CFR through a separate rulemaking, after the standard had been revised and authorized by APTA. These would include various other sign and marking requirements, including those addressing size, color, and contrast. FRA agreed with the Task Force's recommendation, and has not modified this final rule with respect to this issue. As discussed earlier, the standard was revised and thereafter authorized by APTA on October 7, 2007. The standard is now designated as APTA SS–PS–002–98, Rev. 3, ''Standard for Emergency Signage for Egress/Access of Passenger Rail Equipment.'' FRA intends to use this standard in a separate rulemaking that will add to and enhance FRA's marking and signage requirements for passenger train emergency systems.

Section 238.114 Rescue Access Windows

FRA has established a new section that contains requirements for rescue access windows for both new and existing passenger cars. As discussed in detail above, this new section was prompted in part by the April 23, 2002 collision involving a Metrolink passenger train near Placentia, CA, and the ensuing NTSB Safety Recommendation (R–03–21) to FRA, which illustrated the potential importance of having rescue access windows on each level of a passenger car. The general intent of the provision is to provide a means of rescue access by emergency responders through a window directly into every passenger compartment on every level of a passenger car, in the event that a stairway or interior door is compromised and exterior doors are blocked.

Paragraph (a). Paragraph (a) contains requirements specifying the minimum number and location of rescue access windows. These requirements apply on or after the effective date of the final rule to all passenger cars, except for certain, existing single-level cars. As noted above, although FRA's original regulations did not specifically require any minimum number of rescue access windows for passenger cars, they continue to require that windows that are intended for rescue access be marked and that instructions be provided for their operation. See § 223.9(d)(2).

Paragraph (a)(1) contains the number and location requirements for rescue access windows in single-level passenger cars. FRA is requiring that each single-level passenger car have a minimum of two rescue access windows. At least one rescue access window must be located in each side of the car, entirely within 15 feet of the centerline of the car, or entirely within 7½ feet of the centerline if the car does not exceed 45 feet in length. As discussed above, the Task Force recommended requiring two windows for rescue access (versus four, as is required for emergency exit) mainly because rescue access windows are the third means of egress in the overall emergency systems approach, with doors and emergency windows being the first and second means of emergency exit, respectively.

Rescue access windows in a single-level passenger car are required to be located ''as close to the center of the car as possible,'' unlike emergency window exits which should be in a staggered configuration to the extent practical. *See* Figure 1a to subpart B; *see also* Figures 1b and 1c to subpart B. Staggering the location of emergency window exits is intended to (i) ensure that a window exit is available for egress in the event that one end of the car is deformed by placing window exits throughout the car; (ii) optimize the rate of egress, as passengers have less distance to move to reach a window exit; and (iii) avoid congestion that could occur if the window exits were all located adjacent to or directly opposite one another. Since, in general, a minimum of only one rescue access window per side, per level of a single-level passenger car is required, the best way to ensure that a window is available for access in the event that either end of the car is

deformed is to locate the window in the center portion of the car, which is generally less vulnerable to significant deformation in the event of a collision involving either end of the car. Congestion should likely not be an issue for rescue access window usage in a situation requiring emergency evacuation as most car occupants physically able to do so would likely have begun to self-evacuate through doors and emergency window exits prior to the arrival of emergency responders.

To ensure that railroads have sufficient flexibility to select those window locations best suited for rescue access, a 30-foot section along the center of a typical 85- to 90-foot-long passenger car has been designated for their location. This flexibility allows railroads to take into consideration the location of external hazards (such as third-rail shoes); potential hindrances created by interior fixtures for those rescue access windows intended to be opened by being pushed inward into the passenger compartment; the location of emergency window exits in passenger cars without dual-function windows; and other factors that a railroad may deem relevant. For passenger cars not longer than 45 feet, approximately half the length of a standard passenger car, railroads have the flexibility to select a rescue access window from among approximately three windows along a 15-foot section in the center of the car.

If the seating level is obstructed by an interior door or otherwise partitioned into separate seating areas, the regulation requires that each separate seating area have at least one rescue access window in each side of the seating area, located as near to the center of the car as practical. This requirement is consistent with the general objective of having at least one rescue access window on each side of a passenger seating area or passenger compartment. Nevertheless, FRA is not aware of any such single-level car in current operation in the United States to which this requirement would apply.

FRA notes that on some single-level passenger cars, polycarbonate windows are installed in a channel in the window mask, which is itself installed in the car body with the frame compressed over the window to secure it. Removal of the window would require removal of the frame, which would be very difficult in an emergency situation. In addition, it would be costly for these cars to be retrofitted with glass windows (so that they could be shattered) or with zip-strip systems to literally un-zip the window panel from its frame and gasketing. On this type of equipment, the location requirement would be met by having a rescue access window available on each side of each end of the same passenger compartment, including in exterior side doors. An exception was crafted that permits the location of the rescue access windows in four exterior side doors. It was approved by the Task Force, Working Group, and the full RSAC, and has been adopted by FRA in this final rule. Moreover, as proposed in the NPRM, the final rule permits these windows to be located farther than 15 feet from the car's centerline, provided that there is at least one such window in each side of each end (half) of the same passenger compartment—a minimum of four rescue access windows, overall. FRA believes that effectively requiring a minimum of four rescue access windows, instead of two, is appropriate for granting flexibility for installing rescue access windows on existing equipment in side doors.

Paragraph (a)(1)(ii) states the number and location requirements for rescue access windows for single-level passenger cars that were ordered prior to September 8, 2000, and placed in service prior to September 9, 2002, if equipped with manual door releases for at least two exterior side doors (or door leaves) in diagonally-opposite quadrants of the cars. The manual door release must be capable of releasing the door (or door leaf) to permit it to be opened without power from outside the car, be located adjacent to the door (or door leaf) which it controls, and be designed and maintained so that an emergency responder could access the release from outside the car without requiring the use of a tool or other implement. The requirements of paragraph (a)(1)(ii) become effective August 1, 2010. FRA decided to make these requirements applicable not until 18 months after publication of this final rule, in part because the passenger cars subject to this provision have safety features not otherwise required for cars of their age—*i.e.*, manual releases capable of opening side doors from outside of the cars. Section 238.235(b) contains requirements for manual door releases, but only applies to passenger cars ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002.

This paragraph also addresses those passenger cars equipped with compressed frame window systems in which rescue access windows will need to be retrofitted in the four side doors by replacing the polycarbonate glazing with glass that can be broken to gain access into the car. The 18-month implementation period allows for the time necessary to plan and carry out the retrofit without disrupting train service. In the interim, emergency responders will continue to rely on the manual door releases to open the side doors for rescue access purposes should the need arise.

In paragraph (a)(2), FRA has adopted minimum requirements for the number and location of rescue access windows in main levels of multi-level passenger cars. Each main level in a multi-level passenger car is subject to the same, minimum requirements provided for single-level passenger cars in paragraph (a)(1) of this section.

In paragraph (a)(3), FRA has adopted minimum requirements for the number and location of rescue access windows in non-main levels of multi-level passenger cars with seating areas. These requirements and exceptions for non-main levels with passenger seating are also the same as those for emergency window exits on non-main levels with passenger seating. Specifically, paragraph (a)(3)(i) requires that any non-main level used for passenger seating in a multi-level passenger car have at least two rescue access windows in each seating area to permit emergency responders to reach occupants without requiring movement through an interior door or to another level of the car. At least one rescue access window must be located in each side of the seating area. A rescue access window can be located within an exterior side door in the passenger compartment if it is not practical to place the rescue access window in the side of the seating area. *See* Figure 2a to subpart B; compare to Figure 2b to subpart B.

Paragraph (a)(3)(ii) requires only one rescue access window in a seating area in a passenger compartment of a non-main level if it is not practical to place a rescue access window in a side of the passenger compartment due to the need to provide accessible accommodations under the ADA; there are no more than four seats in the seating area; and a suitable, alternate arrangement for rescue access is provided. The rationale for this exception is the same as the one for emergency window exits in non-main levels of multi-level passenger cars in § 238.113(a)(3)(ii), as discussed above.

Paragraph (a)(3)(iii) requires that passenger cars both ordered prior to April 1, 2009 and placed in service prior to April 1, 2011 have only one rescue access window in a seating area in a passenger compartment of a non-main level if it is not practicable to place a rescue access window in a side of the passenger compartment (due to the presence of a structure such as a bathroom, electrical locker, or kitchen)

and there are no more than eight seats in the seating area. For more background on this provision, please see the related discussion above for emergency window exits in such seating areas.

In paragraph (a)(4), FRA has adopted minimum requirements for the number and location of rescue access windows for passengers cars with a sleeping compartment or similar private compartment. Each level of a passenger car with a sleeping compartment or a similar private compartment intended to be occupied by passengers or train crewmembers is now required to have a minimum of one rescue access window in each such compartment. For purposes of this paragraph, a bathroom, kitchen, and locomotive cab are not considered a ''compartment.'' These requirements reflect current practice. Amtrak cars with sleeping compartments are already equipped with a window in each such compartment that is capable of being used for both emergency egress and rescue access.

Paragraph (a)(5) addresses the use of dual-function windows as rescue access windows. If on any level of a passenger car the emergency window exits installed to meet the minimum requirements of § 238.113 are intended to function as rescue access windows, the requirements of paragraphs (a)(1) through (a)(4) of this section for the number and location of rescue access windows are met for that level. Under this provision, four rescue access windows are required for cars with dual-function windows that do not have at least one rescue access window in each side within 15 feet of the centerline of the car.

Paragraph (b). Paragraph (b) contains the requirements for the ease of operability of rescue access windows. The requirements apply on or after April 1, 2008, and require that each rescue access window be capable of being removed without unreasonable delay by an emergency responder using either a provided external mechanism, or tools or implements that are commonly available to the responder in a passenger train emergency, such as a sledge hammer or a pry bar. In the NPRM, FRA had proposed the same requirement except for the terminological difference that each rescue access window be capable of being removed ''without undue delay.'' In the final rule, FRA has decided to use the words ''without unreasonable delay,'' however, in order to avoid any confusion with other uses of ''without undue delay'' in FRA's regulations. Nevertheless, for the purposes of this rulemaking, the proposed language in the NPRM and the text of this final rule are intended to mean the same thing with respect to the speed at which the rescue access windows must be capable of being removed.

FRA makes clear that the adopted performance requirement for removing windows ''without unreasonable delay'' is intended to be less stringent than the performance requirement of ''rapid and easy'' that is specified for removing emergency window exits in § 238.113. For example, using a sledge hammer to shatter a glass window would be considered removal without unreasonable delay. Windows that are not made of glass may also be designed to be removed without unreasonable delay by an emergency responder, through use of an axe, sledge hammer, or similar large impact tool to strike the window at an appropriate point so that the window panel will push inward.

Paragraph (c). Paragraph (c) contains the requirements for the dimensions of rescue access windows. Each rescue access window in a passenger car, including a sleeping car, ordered on or after April 1, 2009, or placed in service for the first time on or after April 1, 2011, is required to have an unobstructed opening with minimum dimensions of 26 inches horizontally by 24 inches vertically. If the rescue access window is located within an exterior side door, in accordance with the requirements of paragraph (a)(3)(i) of this section, it is permitted to have an unobstructed opening with minimum dimensions of 24 inches horizontally by 26 inches vertically. FRA makes clear that a seatback is not considered an obstruction if it can be moved away from the window opening without requiring the use of a tool or other implement. The dimensions for rescue access window unobstructed openings are the same as those for emergency window exit unobstructed openings. Accordingly, FRA's reasoning for proposing and adopting these minimum dimensions for emergency window exits applies here to rescue access windows. These minimum dimensions are intended to allow an emergency responder equipped with a self-contained breathing apparatus to pass through the window, as well as allow a train occupant to be carried through the window on a standard-sized stretcher. As noted in the earlier discussion concerning emergency window exits, FRA chose not to adopt a similar exception to the dimension requirements for rescue access windows because the additional rescue access windows are not likely to be as useful in an emergency situation requiring immediate evacuation (*e.g.,* to escape water, smoke, or fire) as additional emergency window exits. The requirement for minimum dimensions also helps ensure that there will be no confusion as to whether or not the window is of the appropriate size to accommodate a responder equipped with breathing equipment and a standard-sized stretcher.

Paragraph (d). As discussed above, FRA has modified the requirements for rescue access window marking and operating instructions, which were formerly contained in § 223.9(d)(2), and has moved them here to paragraph (d). Formerly, each rescue access window was required to be ''marked with a retroreflective, unique, and easily recognizable symbol or other clear'' marking. FRA has restated these requirements to make clear that rescue access windows must be marked with retroreflective material. Second, FRA makes clear that a unique and easily recognizable symbol, sign, or other conspicuous marking must be used to identify each rescue access window. FRA has replaced the word ''clear'' in the former requirements with the word ''conspicuous'' and has added the word ''sign'' as another example of a conspicuous marking. The revisions make clear that use of retroreflective material to mark a rescue access window is a distinct requirement in itself that was adopted to enable emergency responders to quickly identify rescue access windows under conditions of darkness by shining a flashlight on a car. Second, the revisions make clear that the window must also be marked by a unique and easily recognized symbol, a sign (such as ''RESCUE ACCESS''), or other conspicuous marking (such as delineation of the window by means of a contrasting color). Both requirements could be met by the same marking.

FRA also notes that the regulations formerly required that each railroad post ''clear and understandable'' window access instructions either at each rescue access window or at each end of the car. FRA has replaced the word ''clear'' with the word ''legible,'' so that railroads are required to post ''legible and understandable'' operating instructions. Use of the word ''clear'' in § 223.9(d) had created some confusion, since it could have more than one meaning, and FRA believes the amendment eliminates any further confusion. FRA has also modified the requirements so that it is no longer permissible to have window access instructions solely at the end of the car. Instead, legible and understandable rescue access window instructions, including instructions for

removing the window, are required to be posted at or near each rescue access window. FRA agreed with the Task Force that rescue access efforts could be unduly delayed by posting rescue access window operating instructions at the end of a car, potentially more than 40 feet away from the rescue access window to which the instructions apply.

As noted above in the discussion of emergency window exits, the Task Force has focused on revisions to APTA SS–PS–002–98, Rev. 2, ''Standard for Emergency Signage for Egress/Access of Passenger Rail Equipment,'' in order to recommend whether some or all of its contents should be incorporated into FRA's regulations. This APTA standard also contains detailed criteria for marking rescue access windows, including the use of retroreflective material. FRA invited comment on whether the criteria in the APTA standard or in draft revisions to this standard for marking rescue access windows were appropriate for use in the final rule. *See* 71 FR 50292. While no written comments were received on this issue, both the Task Force and the Working Group recommended that FRA add the criteria to the final rule. FRA agrees and has added a definition of ''retroreflective material'' that incorporates by reference criteria from ASTM's Standard D 4956–07 for Type I Sheeting. See the discussion in § 238.5. This newly added definition is consistent with the definition and requirements for retroreflective markings for rescue access windows that are contained in Revision 3 of the APTA standard.

In order to maintain optimum retroreflective properties of the base material, any retroreflective markings that have ink or pigment applied should utilize a translucent or semi-translucent ink, as per the manufacturer's instructions. A clear coat that protects against ultra-violet light may be added to the markings to prevent fading. Retroreflectivity requirements shall be met if protective coatings or other materials for the enhancement of marking durability are used.

Section 238.121 Emergency Communication

This new section establishes emergency communication requirements for Tier I passenger equipment and replaces the previous emergency communication system requirements in § 238.437 for Tier II passenger equipment. Overall, the adopted requirements generally reflect current practice for Tier I passenger equipment and generally carry forward the former requirements for Tier II passenger equipment.

In the NPRM, FRA had originally proposed to designate this section as § 238.117 and redesignate § 238.117 (Protection against personal injury) as § 238.121. *See* 71 FR 50276, 50304. FRA had believed that such a redesignation would help keep the emergency system requirements together in section numbering sequence for the benefit of the user. However, concern has been raised that redesignating original sections of the May 12, 1999 Passenger Equipment Safety Standards rule could cause unnecessary confusion, and FRA has decided against the proposed redesignation. FRA has chosen instead to designate this section as § 238.121. This new designation has no effect on the substance of the emergency communication requirements.

Paragraph (a). Paragraph (a) contains requirements for PA systems for both existing and new Tier I and Tier II passenger cars. Most passenger cars used in commuter and intercity service are equipped with PA systems that train crews often use to notify passengers of the nature and expected duration of delays. If a person requires immediate medical attention, the crew may also use the PA system to request assistance from someone onboard with medical training. Railroad representatives on the Task Force noted that PA systems are particularly beneficial in the immediate aftermath of an accident to provide instructions for appropriate passenger action. In light of a security threat or other emergency situation requiring rapid evacuation of an area, crews may also use the PA system to instruct passengers to deboard as quickly as possible. If there is a hazard on one end of the train or one side of the train, crews may use the PA system to notify passengers of the hazard and direct them to use the appropriate exit route(s) that would avoid or minimize their exposure to the hazard. Of course, all things being equal, the safest place for passengers is to remain onboard the train. Deboarding could aggravate an emergency situation, particularly if passengers step onto the right-of-way on their own without direction from a crew member. Accordingly, the crew must have the means to provide passengers with appropriate instructions as soon as possible.

Paragraph (a)(1) requires that on or after January 1, 2012, each Tier I passenger car be equipped with a PA system that provides a means for a crewmember to communicate to all train passengers in an emergency situation. FRA understands that existing Tier I passenger cars that currently do not have PA systems are scheduled to be retired before 2012 and thus would be removed from service before the requirement would apply. FRA notes that APTA's PRESS Task Force is currently evaluating the feasibility of a wireless, two-way communication system that would function independently of the train line, *i.e.*, not rely on the train line for power. The wireless system is intended to provide a means of two-way communication in the event that the train line is broken, as may occur as a result of certain collisions or derailments. However, FRA makes clear that it is not currently adopting a requirement in this section that the communication system be wireless; communication through use of a train line is still permitted.

Paragraph (a)(2) contains requirements for new Tier I and all Tier II passenger cars. As is stated for existing Tier I passenger cars in paragraph (a)(1), this paragraph requires that each Tier I passenger car ordered on or after April 1, 2008, or placed in service for the first time on or after April 1, 2010, and all Tier II passenger cars be equipped with a PA system that provides a means for a crewmember to communicate to all train passengers in an emergency situation. In addition, PA systems in new Tier I and all Tier II passenger cars are required to provide a means for a crewmember to communicate in an emergency situation to persons in the immediate vicinity of the train (*e.g.*, on the station platform). These requirements include the basic features of PA systems installed in most recently-manufactured Tier I passenger cars and in all existing Tier II passenger trains.

Finally, it should be noted that the PA system may be part of the same system as the intercom system. A shared configuration is quite common on cars equipped with both PA and intercom systems.

Paragraph (b). Paragraph (b) contains the requirements for intercom systems. Traditionally, conductors and assistant conductors have been relied upon to relay information to passengers in both normal and emergency situations through face-to-face interaction or by use of a PA system. However, with smaller crew sizes, such face-to-face communication may not be possible for passengers attempting to quickly communicate to the crew a medical emergency, safety concern, or security threat requiring immediate attention. For instance, a passenger in the last car of a train who needs to communicate a safety or security threat to a crewmember could potentially have to walk the entire length of the train to do

so (assuming the crew is composed of an engineer and one conductor, who in this circumstance would be in the first car at the time). Furthermore, if the conductor were incapacitated, passengers would need to communicate with the engineer. The Task Force therefore recommended and FRA decided that emergency communication systems in new passenger cars must include intercom systems to enable passengers to quickly communicate emergency situations to the train crew. These requirements reflect common intercom system configurations for new passenger cars.

Specifically, paragraph (b)(1) contains the intercom system requirements for new Tier I and all Tier II passenger cars. Each Tier I passenger car ordered on or after April 1, 2008, or placed in service for the first time on or after April 1, 2010, and all Tier II passenger cars are required to be equipped with an intercom system that provides a means for passengers and crewmembers to communicate with each other in an emergency situation. Passenger cars that are at least 45 feet in length are required to have a minimum of one intercom in each end (half) of each car that is accessible to passengers without requiring the use of a tool or other implement. Although some passenger cars currently equipped with intercom systems have one located in each end (half), others have only one per car. An intercom in each end (half) of a car is intended to allow passengers to have access to an intercom within half a car length, which is normally 42 to 45 feet, and without having to pass into an adjoining car. As long as intercoms are accessible to passengers, they may be placed anywhere in each end (half) of the car and not necessarily in the far ends.

Paragraph (b)(1) continues the logic of former § 238.437 by requiring only one intercom for a passenger car that does not exceed 45 feet in length, such as the Talgo passenger cars operated by Amtrak. As the length of a conventional passenger is typically between 85 and 90 feet, FRA believes it appropriate to require a car not more than half that length to have only one intercom location. This paragraph also continues to require, as § 238.437 formerly did, that a Tier II passenger car ordered prior to May 12, 1999, be equipped with only one intercom. The preamble to the April 23, 2002 final rule, which amended the May 12, 1999 final rule, explained that after FRA had proposed that intercoms be located at each end of a Tier II passenger car, Amtrak indicated that not all passenger cars in its high-speed trainsets had intercom transmission locations at each end of the cars. *See* 67 FR 19986. Amtrak further noted that the intercoms would be difficult to install at the non-vestibule ends of the cars. As these trainsets were in development in advance of both the then-proposed and final rules, FRA made an exception for all cars ordered prior to May 12, 1999, and this final rule carries forward this exception.

Some Task Force members were concerned that making the intercoms accessible to passengers without requiring the use of a tool or other implement could lead to misuse that could unnecessarily distract the train operator. However, representatives from Amtrak and various commuter railroads that operate cars with intercom systems indicated that they have successfully implemented measures to deter misuse. For instance, on some passenger cars, the intercom transmission device is located in a safety compartment designated and marked for emergency communications only. In the proposed rule, FRA invited comment on whether passenger misuse of intercom systems had been identified as a problem, and, if so, FRA invited suggestions for measures that could curb such misuse without rendering the systems inaccessible to passengers in an emergency. No comments were received on this issue, and FRA has decided to adopt the language as proposed. FRA makes clear that intercoms need to be accessible to passengers with disabilities to the extent required by the ADA and its implementing regulations.

Paragraph (b)(2) requires that the location of each intercom intended for passenger use be clearly marked with luminescent material and that legible and understandable operating instructions be posted at or near each such intercom to facilitate passenger use. These requirements apply to each Tier I passenger car on or after April 1, 2010, and continue to apply to each Tier II passenger car. During the development of the rule, some railroad representatives on the Task Force noted that although instructions are currently posted at the intercom locations on their cars, there are no luminescent markings. The Task Force therefore recommended that luminescent markings be required. FRA proposed to adopt such a requirement in this final rule, and invited comment on whether the luminescent material should be HPPL material, as discussed below. *See* 71 FR 50293. The final rule requires luminescent marking of each intercom location to ensure that the intercom can be easily identified for use in the event that both normal and emergency lighting are not functioning. The posted operating instructions, however, are not required to be luminescent. Some Task Force members indicated that the instructions may be easier to read when not luminescent.

As noted in the discussion concerning emergency window exit signage, above, APTA SS–PS–002–98, ''Standard for Emergency Signage for Egress/Access of Passenger Rail Equipment,'' contains specific criteria for luminescent markings. The Task Force has focused on revisions to this APTA standard in order to recommend whether to incorporate some or all of its contents into part 238 by reference and thereby require that luminescent markings for intercoms comply with the standard as it relates to luminescent markings. APTA PRESS has also indicated that they intend to revise APTA SS–PS–001–98, ''Standard for Passenger Railroad Emergency Communications,'' to include more specific requirements for marking emergency communication systems. In the proposed rule, FRA invited comment on whether the luminescent material that would be required for marking should be HPPL material. FRA indicated that it would evaluate any comments received in considering whether a requirement for use of HPPL material should be established in the final rule.

Although no written comments were received, the Task Force discussed at length issues associated with the development of HPPL material component requirements, as noted above. Ultimately, the Task Force advised that requirements in Revision 2 of APTA Standard SS–PS–002–98, ''Standard for Emergency Signage for Egress/Access of Passenger Rail Equipment,'' for HPPL were very detailed and complex and not readily transferable directly into this final rule. Therefore, the Task Force recommended incorporating such requirements by reference into the CFR through a separate rulemaking, after the standard had been revised and authorized by APTA. These would include various other sign and marking requirements, including those addressing size, color, and contrast. FRA agreed with the Task Force's recommendation, and has not modified this final rule. Accordingly, the marking is only required to be luminescent. As noted, APTA authorized Revision 3 of the standard on October 7, 2007, and FRA intends to use this standard in a separate rulemaking that will add to and enhance FRA's marking and signage requirements for passenger train emergency systems.

Paragraph (c). Paragraph (c) continues to require that PA and intercom systems on Tier II passenger trains have back-up

power for a minimum period of 90 minutes. *See* former § 238.437(d). An example of a back-up power source is the main battery in a passenger car. PA and intercom systems may continue to draw back-up power from a source which provides power to other systems, as the main car battery does. These systems are not required to have a back-up power source that provides power exclusively for their operation. Additionally, it is permissible to meet this requirement using a main car battery located in another car, if the two cars are semi-permanently coupled as in the case of a married pair of MU locomotives.

The Task Force approved a recommendation for a back-up power requirement for new Tier I passenger cars, similar to the requirements contained in § 238.115(b)(4) for emergency lighting back-up power systems. That is, the back-up power system must be capable of operating: in all equipment orientations within 45 degrees of vertical; after the initial shock of a collision or derailment resulting in individually applied accelerations of 8g longitudinally, 4g laterally, and 4g vertically; and for at least 90 minutes. Yet, this recommendation was not forwarded to the Working Group, due to an oversight, prior to the publication of the NPRM. Given that backup power to the PA and intercom systems could be supplied by the same source as that for the emergency lighting system, and that the amount of power required would likely be only a fraction of that required for the emergency lighting system, FRA had no reason to believe that this recommendation would not have received the full support of the Working Group or full RSAC. As a result, FRA noted in the NPRM that it was considering inserting in the final rule a back-up power system requirement containing the provisions recommended by the Task Force, and FRA invited comment on doing so. In particular, FRA sought comment on whether the system needs to be capable of providing continuous communication over the 90-minute period, or only intermittent communication, which would draw less battery power. FRA noted that it may not be necessary to provide the means to communicate continuously for a 90-minute period, and FRA invited comment as to how many minutes of intermittent communication would need to be provided.

While no written comments were received on this issue, the Task Force discussed the matter at length during its meeting held on October 25–26, 2006. Both APTA and the UTU indicated that 90 minutes of continuous communication was unnecessary. Instead, the Task Force recommended that intermittent communication with the equivalent of 15 minutes of continuous communication would be sufficient during a 90-minute period. In order to ensure that the system will have enough power to support a total of 15 minutes of communication at any point during the 90-minute period, the Task Force agreed that the system must, at a minimum, support 15 minutes of continuous communication at the end of the 90-minute period (*i.e.*, during minutes 76 through 90). The Working Group concurred with the Task Force's recommendations, and FRA has agreed to adopt them in this final rule. As a result, the final rule includes requirements for a back-up power system for both Tier I and Tier II passenger trains.

Section 238.123 Emergency Roof Access

This new section contains emergency roof access requirements for Tier I and Tier II passenger cars ordered on or after April 1, 2009, or placed in service for the first time on or after April 1, 2011. Requirements for Tier II power cars and existing Tier II passenger cars remain in § 238.441, as discussed below. The emergency roof access requirements for Tier II passenger equipment contained in former § 238.441 and APTA PRESS recommended practice RP–C&S–001–98, ''Recommended Practice for Passenger Equipment Roof Emergency Access,'' serve as the basis for the requirements in this section. This APTA recommended practice contains additional useful information not included in this final rule; however, FRA notes that this final rule supersedes certain provisions of the recommended practice.

In the NPRM, FRA originally proposed to designate this section as § 238.118, *see* 71 FR 50276, 50304. FRA has chosen instead to designate this section as § 238.123, consistent with the decision not to redesignate original sections of the May 12, 1999, Passenger Equipment Safety Standards final rule. This new designation has no effect on the substance of the emergency roof access requirements.

Emergency roof access locations (roof hatches or structural weak points) can be especially useful in emergency situations where passenger cars have rolled onto their sides following certain collision and derailment scenarios. All things being equal, car rollover or tilt should result in more severe injuries than when a car remains upright, as occupants may be thrown greater distances inside the car. In turn, this risk increases the potential need for rescue access of the car's occupants because of the reduced likelihood that the occupants can evacuate the car on their own. In addition, when there is a rollover, doors, which are the preferred means of access under normal circumstances, may be blocked or otherwise rendered inoperable due to structural damage to the door or the door pocket. In particular, end doors, which due to the direction they face, would normally be better suited for use than side doors when a car has tilted or rolled onto its side, may also be blocked, jammed, or otherwise unavailable for use. Moreover, although emergency responders may be able to enter a car that is on its side via a rescue access window, the removal of an injured occupant through a side window in such circumstances can be difficult or complicated, especially depending upon the condition of the occupant.

Paragraph (a). Paragraph (a) contains requirements for the number and dimensions of emergency roof access locations. Each passenger car ordered on or after April 1, 2009, or placed in service for the first time on or after April 1, 2011, must have a minimum of two emergency roof access locations. Although the May 12, 1999, final rule required Tier II passenger cars and power cars to have only one roof hatch for emergency roof entry or at least one structural weak point for properly equipped emergency personnel to quickly access a car, many new Tier I multi-level passenger cars are currently being manufactured with up to four structural weak points in the roof. In determining the minimum number of access points needed for new Tier I and Tier II passenger cars, the Task Force agreed it would be useful to protect the emergency roof access locations against crush at either end of the car. To do so would require placement of the locations away from the far ends of the car or, at a minimum, placement not in the same end (half) of the car in the event that the end with the access points becomes crushed. Second, the Task Force thought it prudent to facilitate rescue access by having the access points located within the bottom half of the car's roof, so that the bottom of the opening would be closer (lower) to the ground and thus, presumably, more easily accessible when the car is on its side. This would require having one access point on either side of the roof's longitudinal centerline. To accomplish both goals, the Task Force recommended having two access points

located at diagonally-opposite quadrants of the roof. *See* Figure 3 to subpart B.

Under this new section, each roof access location is required to have a minimum opening of 26 inches longitudinally (*i.e.*, parallel to the longitudinal axis of the car) by 24 inches laterally. These dimensions are consistent with the minimum dimension requirements for emergency window exits specified for new passenger cars in the 1999 Passenger Equipment Safety Standards final rule, *see* 64 FR 25673, and were based on specifying opening requirements necessary to allow passage of an emergency responder equipped with a self-contained breathing apparatus or fire gear, as well as to allow passage of a person being carried on a backboard or basket stretcher, *see* 64 FR 25595–25596. In discussing the issue of appropriate dimensions for emergency roof access locations, Task Force members noted that in order to gain access to a car via a structural weak point, a responder would normally have to cut through the roof skin, which is usually steel, and then through the lining. In some cases, a responder may have to cut through additional non-rigid structures. If the outside dimensions are only 26 inches longitudinally by 24 inches laterally, and multiple cuts through car structures are required to gain access to the passenger compartment, this could present a problem for emergency responders, since each subsequent cut made using a saw would potentially result in a smaller opening. Consequently, railroads and car builders would need to take this into account when designing structural weak points and ensure that the dimensions of the final cut in such circumstances would still result in an opening meeting the minimum dimension requirements. This concern is addressed further in the discussion of paragraph (d), below.

Paragraph (b). Paragraph (b) provides that permissible means of emergency roof access include either a hatch, or a clearly marked structural weak point in the roof for access by properly equipped emergency response personnel. Structural weak points, commonly known as ''soft spots,'' are usually created by routing cables, wiring, and piping in the roof of the car around the location designated for roof access. This paragraph affords railroads the flexibility of installing either roof hatches or providing structural weak points in the roof, as each individual railroad is in the best position to decide which one is preferable taking into consideration such factors as the car's intended use and the safety hazards presented by one versus the other. For example, although roof hatches could provide a means of self-evacuation in addition to a means of access, placing them in the roofs of electric MU locomotives, which rely on overhead catenary systems for power, could create an electrocution hazard for occupants attempting to self-evacuate in an emergency.

Paragraph (c). Paragraph (c) requires that emergency roof access points be located, insofar as practical, in such a manner that when a car is on its side: (i) One emergency roof access location is wholly within each half of the roof as divided top from bottom; and (ii) one emergency roof access location is wholly within each half of the roof as divided left from right. *See* Figure 3 to subpart B. Use of the word ''practical'' allows railroads and car builders some discretion regarding the location of the access points and is necessary to accommodate particular equipment types. For instance, some electric MU equipment has pantographs that take up a significant portion of one end of the rooftop, making it difficult to place one emergency access location wholly within each half of the car's roof. Additionally, on some passenger cars that have luggage racks, it may be more practical to place the emergency access location so that it is not wholly within the bottom half of the car's roof (when the car is on its side) if doing so would facilitate rescue access by eliminating the need for emergency responders to cut through or maneuver around the luggage racks to get to passengers.

Paragraph (d). Paragraph (d) contains provisions related to obstructions and requires that the ceiling space below each emergency roof access location be free from wire, cabling, conduit, and piping. Additionally, paragraph (d) requires that, where practicable, this space also be free of rigid secondary structure(s) (*e.g.*, diffusers and diffuser support, lighting back fixtures, mounted PA equipment, and luggage racks). In determining the placement of the emergency roof access locations, railroads and manufacturers need to consider the requirements of § 238.123 as a whole. Use of the word ''practical'' in paragraph (c) is intended to allow more discretion than would be allowed through use of the word ''practicable'' in this paragraph (d). For example, in a situation where placement of an emergency roof access location wholly within the bottom half of a car's roof (when the car is on its side) would result in obstruction by a rigid secondary structure, a railroad would be required to place the roof access location elsewhere so as to avoid the obstruction, even though this may result in its placement partially in both sides of the roof, or otherwise not wholly within each half of the roof. In such a situation, the rule recognizes that avoidance of the rigid secondary structure is more critical than the exact location of the emergency roof access location.

If emergency roof access is provided by means of a hatch, it must be possible to push interior panels or liners out of their retention devices and into the interior of the vehicle after removing the hatch. For example, for car interior aesthetics, it would not be uncommon to cover the area below the hatch with lining and use a fastener like VELCRO© to secure the lining in place. This type of cover and securement make it possible for emergency responders to reach the interior of the vehicle by pushing in the lining after removing the hatch. This is just one example, and other types of covers and means of securement are permissible, provided emergency responders are able to push through them to reach the interior of the vehicle after removing the hatch.

If emergency roof access is provided by means of a structural weak point, the rule states that it is permissible to cut through interior panels, liners, or other non-rigid secondary structures after making the cutout hole in the roof. However, any such additional cutting that is required must permit a minimum opening of the dimensions specified in paragraph (a) to be maintained. In this regard, having to make additional cuts could affect the size of the markings indicating the structural weak points, as provided in paragraph (e).

Paragraph (e). Paragraph (e) contains requirements for providing markings of, and instructions for, emergency roof access locations. Each emergency roof access location is required to be clearly marked with retroreflective material of contrasting color. The retroreflective material is intended to enable emergency responders to quickly identify the access locations by shining a light on the roof. As discussed in the section-by-section analysis of the definition of ''retroreflective material,'' FRA has incorporated ASTM International's Standard D 4956–07 by reference in the CFR.

While FRA did not specifically request comment on applying this definition to roof access markings, FRA believes it logical to apply this definition here, in addition to applying it to rescue access windows in § 238.114. The underlying reasons for using retroreflective material for roof access markings are the same as those for using the material for rescue access

window markings. Nevertheless, FRA notes that this definition has not been included in the emergency roof access marking requirements in § 238.441 for existing Tier II passenger cars and power cars—only for new equipment. As a result, markings on existing equipment do not have to be removed and reapplied, should they not be in conformance with the retroreflectivity criteria applicable to markings on new equipment in this final rule.

Paragraph (e) requires that legible and understandable instructions be posted at or near each emergency roof access location. These instructions are not required to be retroreflective for two principal reasons: it can be difficult to read writing on certain grades of retroreflective materials while shining light on them, and light used to identify the emergency rescue access locations should be available for reading the instructions as well. This is consistent with the requirements for marking rescue access windows. As an additional requirement, paragraph (e) requires that if emergency roof access is provided by means of a structural weak point, the line along which the roof skin is intended to be cut is required to be clearly marked with retroreflective material. The size of the border marking may have to be larger than 24 inches laterally by 26 inches longitudinally to ensure that any cuts in addition to the cut through the roof skin retain the minimum dimensions required for the opening. Structural weak points are also required to have a sign plate with a retroreflective border that states as follows:

CAUTION—DO NOT USE FLAME-CUTTING DEVICES

CAUTION—WARN PASSENGERS BEFORE CUTTING

CUT ALONG DASHED LINE TO GAIN ACCESS

ROOF CONSTRUCTION—[STATE RELEVANT DETAILS]

In particular, warning must be provided against use of a flame-cutting device during a rescue access attempt to avoid creation of a fire hazard. This is especially important since rescue access is usually a last resort for those who cannot self-evacuate due to being injured or disabled, as well as due to the lack of a viable exit. Emergency responders usually have a variety of tools available to them at the scene of an emergency, including a specialized saw which can be used to cut through steel, and do not have to rely on flame-cutting devices.

Subpart D—Inspection, Testing, and Maintenance Requirements for Tier I Passenger Equipment

Section 238.303 Exterior Calendar Day Mechanical Inspection of Passenger Equipment

This section contains the requirements related to the performance of exterior mechanical inspections of passenger cars (*e.g.*, passenger coaches, MU locomotives, and cab cars) and unpowered vehicles used in a passenger train each calendar day that the equipment is used in service. Paragraph (e) of this section identifies the various components that are required to be inspected as part of the exterior calendar day mechanical inspection.

As proposed, FRA is adding new paragraph (e)(18) to require that all rescue-access-related exterior markings, signage, and instructions required by § 238.114 (rescue access windows) and § 239.107 (emergency exits) be in place and, as applicable, conspicuous, and/or legible. Paragraph (e)(18)(i) does permit passenger cars with any required rescue-access-related exterior markings, signage, or instructions that are missing, illegible, or inconspicuous, as applicable, to remain in passenger service until the equipment's fourth exterior calendar day mechanical inspection or next periodic mechanical inspection required under § 238.307, whichever occurs first, after the noncompliant condition is discovered. The car must then be repaired or removed from service.

The four-day repair flexibility is intended to allow railroads to schedule repairs at locations where they can be performed safely and in a manner that would avoid disrupting normal operations. Railroad representatives on the Task Force noted that not all yards are properly equipped for personnel to safely, effectively, or efficiently remove and replace signage on the exterior of cars. For example, work on the upper levels of cars can be more safely performed at maintenance facilities that have platform ladders. In addition, various vendors noted that signs and markings must be applied on a dry, clean surface at temperatures of approximately 65 degrees Fahrenheit and must be allowed to set for up to two hours. Graffiti may render a sign, marking, or instruction illegible and thus in need of replacement. Proper removal of a sign can be a long and tedious process because the adhesives used are difficult to remove. This, coupled with the conditions necessary for application of a sign, may make it an unfeasible task for some railroads to perform during an exterior calendar day mechanical inspection. Furthermore, some long-distance intercity train trips take three or four days to complete, and many of the en-route repair locations may not be appropriate places to make the repairs to signage. Removing a car from service for missing rescue access signage before it reaches its final destination could result in stranding passengers on platforms or require that the same number of passengers ride in a fewer number of cars, with fewer emergency exits available to them as a whole. Thus, the safety of both railroad employees and railroad passengers also necessitates that some flexibility be provided in making repairs.

Paragraph (e)(18)(ii) provides even greater flexibility for use of passenger cars with required rescue-access-related exterior markings, signage, or instructions that are missing, illegible, or inconspicuous on a side of a level of a car that has more than 50 percent of the windows designated and properly marked for rescue access. Such a car is permitted to remain in passenger service until no later than the car's next periodic mechanical inspection required under § 238.307, where the car must repaired or removed from service. In developing the rule, FRA agreed with the Task Force recommendation that this added flexibility for these types of cars recognizes the extra effort that a railroad undertakes by designating and identifying a greater number of rescue-access windows than is required by § 238.114. A single act of vandalism may destroy multiple signs, markings, and instructions or render them illegible or inconspicuous. Placement or replacement of several signs could take more time than may be scheduled for maintenance of the car prior to the periodic mechanical inspection. FRA believes it makes little sense to require immediate repair of the damaged markings when more than a sufficient number meeting the requirements of § 238.114 are still present on the equipment. Moreover, without such flexibility, railroads would likely be discouraged from designating more rescue-access windows than are required by § 238.114.

Similarly, paragraph (e)(18)(iii) provides flexibility for the continued use of a sleeping car that has more than two consecutive windows with any required rescue-access-related exterior markings, signage, or instructions at or near their locations that are missing, illegible, or inconspicuous. Such a car may be operated in passenger service until the car's next periodic mechanical inspection required under § 238.307, when it would have to be repaired or removed from service. FRA believes this

flexibility is necessary because each sleeping compartment intended to be occupied by passengers or train crewmembers is required to have a minimum of one rescue access window in the compartment under § 238.114 and most sleeping compartments have only one window. If two consecutive windows were missing exterior markings, signage, or instructions, an emergency responder would still be readily able to gain access via the window by relying on the signage, markings, or instructions posted at a nearby window.

Paragraph (e)(18)(iv) requires that a record of any noncomplying marking, signage, or instruction described in paragraphs (e)(18)(i) through (iii) be maintained. This record must contain the date and time that the defective condition was first discovered, and must be retained until all necessary repairs have been completed. These records are necessary for purposes of tracking when the defect was first discovered and will be utilized in determining when repairs have to be made on cars that remain in passenger service. Most commuter and intercity railroads already keep this type of record electronically.

Section 238.305 Interior Calendar Day Mechanical Inspection of Passenger Cars

This section contains the requirements related to the performance of interior calendar day mechanical inspections of passenger cars (*e.g.*, passenger coaches, MU locomotives, and cab cars) each calendar day that the equipment is used in service. Paragraph (c) identifies the various components that are required to be inspected as part of the interior calendar day mechanical inspection. Except as provided in paragraphs (c)(8) through (c)(12), and in paragraph (d), all noncomplying conditions under this section must be repaired at the time of the daily interior inspection or the equipment is required to be locked-out and empty in order to be placed or remain in passenger service. FRA notes that it has revised the introductory text of paragraph (c) to expressly reference paragraphs (c)(8) through (c)(12), removing the reference to paragraphs (c)(5) through (c)(7). Paragraphs (c)(5) through (c)(7) do not contain any exceptions themselves. Instead, paragraph (d) references these paragraphs, and it is by operation of paragraph (d) that exceptions are provided. FRA makes clear that removing the reference to paragraphs (c)(5) and (c)(7) in the introductory text of paragraph (c) does not have any effect on the exceptions currently provided in this section.

As proposed in the NPRM, FRA has also slightly modified paragraph (c)(10) in order to add a condition under which a car with noncompliant end doors and side doors may continue in passenger service pursuant to paragraph (d) of this section. The former conditions for such operation were that at least one operative and accessible door be available on each side of the car and a notice be prominently displayed directly on the defective door indicating that the door is defective. In addition to those conditions, this paragraph now requires that the train crew be provided written notification of the noncompliant condition. This additional measure is intended to ensure that crewmembers are aware of a door that may not be available for use in an emergency situation that requires the off-loading of passengers. Without this additional measure, train crews may not realize a door is defective until they actually try to use it. If an emergency requiring the rapid off-loading of passengers should occur before the crew notices that the door is inoperative, then the crew might direct passengers to that door, which could unnecessarily delay the evacuation of the train.

FRA has also added new paragraph (c)(12) to cover the inspection of PA and intercom systems. Paragraph (c)(12) contains requirements for ensuring that, on passenger cars so equipped, PA and intercom systems are operative and function as intended as part of the interior calendar day mechanical inspection. This paragraph also affords flexibility for handling noncompliant equipment, provided that the train crew is given written notification of the defect and a record of the time and date the defect was discovered is maintained. Thus, a passenger car with an inoperative or nonfunctioning PA or intercom system is permitted to remain in passenger service until no later than the car's fourth interior calendar day mechanical inspection or next periodic mechanical inspection required under § 238.307, whichever occurs first, or for a passenger car used in long-distance intercity train service until the eighth interior calendar day mechanical inspection or next periodic mechanical inspection required under § 238.307, whichever occurs first, after the noncompliant condition is discovered. At that time, the PA or intercom system, or both, would have to be repaired, or the car would have to be removed from service.

In developing the rule, railroad representatives on the Task Force noted that PA systems are currently inspected on a daily basis and any necessary repairs are made at the first convenient opportunity. The provision requiring that the train crew be given written notification of any noncompliant PA or intercom system is intended to ensure that the crew is aware of any nonfunctioning system(s) and will not rely upon any such system for communication in the event of an emergency situation. Without such notification, the train crew could mistakenly rely on a system that is inoperative, which could potentially hinder resolution of an emergency situation where the crew relies on using the PA or intercom system to communicate instructions or warnings of hazards to passengers.

In modifying paragraph (c), FRA has reserved paragraph (c)(11) for a contemplated requirement that all low-location emergency exit path markings be in place and conspicuous as part of the interior calendar day mechanical inspection. Low-location emergency exit path markings provide a visual means for passenger car occupants to locate emergency door exits under conditions of limited visibility due to darkness or the presence of smoke, or both. FRA intends to propose minimum standards for low-location emergency exit path markings in a separate NPRM on passenger train emergency systems.

Finally, as discussed in the NPRM, FRA considered clarifying paragraph (c)(7), the interior calendar day inspection requirement that ''[a]ll safety-related signage is in place and legible.'' 71 FR 50297. FRA considered including in paragraph (c)(7) express references to signage, as well as markings and instructions, required by parts 238 and 239. FRA invited comment on whether such clarification should be provided in the final rule. No comment was received, and, in discussing this issue with the Task Force, the Task Force did not recommend making a change in the final rule, as this was already clear. FRA does not believe a change is necessary at this time, but may make modifications related to the possible incorporation by reference of the APTA signage standard in a future rulemaking.

Section 238.307 Periodic Mechanical Inspection of Passenger Cars and Unpowered Vehicles Used in Passenger Trains

This section contains the requirements for performing periodic mechanical inspections on all passenger cars and all unpowered vehicles used in passenger trains. Paragraph (c) identifies the various components that are required to be inspected as part of the periodic mechanical inspection that is required to be conducted no less

frequently than every 184 days. FRA has modified paragraph (c)(5), which requires in paragraph (c)(5)(i) that emergency lighting systems be inspected no less frequently than every 184 days to determine that they are in place and operational, to reserve requirements in paragraph (c)(5)(ii) for the periodic inspection of other emergency systems in this timeframe, such as low-location exit path marking. As discussed above, FRA intends to propose minimum standards for low-location emergency exit path marking in a separate rulemaking on passenger train emergency systems.

FRA notes that if emergency lighting is found to be defective at any time other than the periodic mechanical inspection required by paragraph (c)(5)(i), it still must be brought into compliance pursuant to the provisions contained in § 238.17 related to non-running-gear defects.

FRA had proposed to include periodic inspection requirements within the 184-day timeframe for emergency roof access markings and instructions. However, FRA has decided to require that emergency roof access markings and instructions be inspected no less frequently than every 368 days, as provided in paragraph (d) of this section. As discussed earlier, in commenting on the NPRM, Caltrans requested that FRA extend the interval between inspections for roof access markings and instructions to a maximum of 368 days, instead of the 184 days that FRA had proposed. Caltrans stated that it maintains its passenger equipment on a 120-day maintenance cycle, and that a requirement to inspect the roof access markings and instructions every 184 days would result in Caltrans having to inspect them every 120 days. Caltrans stated that this would increase costs and the potential for employee injury, as each of its inspection requires the use of a man-lift or harness for an employee to safely inspect the markings.

This comment was referred to the Task Force and, with Caltrans' representatives present, the Task Force discussed this comment. Commuter railroads indicated that they had been operating cars with roof access locations for several years or more and that roof access markings and instructions had remained legible and conspicuous during that time. These railroads noted that vandalism has not been a concern for rooftops, and that vandals are much more likely to vandalize the sides of cars, which are much more easily accessible. Further, sign vendors stated that retroreflective roof access markings hold up well in the elements and should easily be expected to go for at least a year without becoming illegible or inconspicuous. The Task Force also considered that some railroads do not have facilities from which they can easily and safely observe the rooftops of their equipment, and agreed that inspecting roof access markings would be more safely conducted when the equipment is out of service at a maintenance facility. The Task Force recommended that FRA require emergency roof access markings and instructions to be inspected not less frequently than every 368 days, instead of the 184 days as proposed. FRA agrees with the Task Force's recommendation, considering the favorable maintenance experience cited and the potential costs involved. FRA believes that a yearly inspection of roof access markings and instructions is sufficient to ensure that they are in place, conspicuous, and legible.

Subpart E—Specific Requirements for Tier II Passenger Equipment

Section 238.437 [Reserved]

This section formerly contained the emergency communication requirements for Tier II passenger equipment. These requirements have been moved to new § 238.121 (''Emergency communication'') to be integrated with the new emergency communication system requirements for Tier I passenger equipment, as stated above. This is consistent with FRA's desire to prescribe, to the extent possible, the same emergency system requirements for all passenger trains, regardless of train speed. Section 238.437 is therefore being removed and reserved. Please see § 238.121 for a discussion of the emergency communication system requirements for Tier II passenger equipment.

Section 238.441 Emergency Roof Access

In issuing the Passenger Equipment Safety Standards, FRA required that Tier II passenger equipment have either a roof hatch or a clearly marked structural weak point in the roof to provide quick access for properly equipped emergency response personnel. *See* 64 FR 25689. FRA stated that the final rule did not contain such requirements for Tier I passenger equipment and that there was no consensus within the Passenger Equipment Safety Standards Working Group to do so. *See* 64 FR 25642. Nevertheless, FRA noted that it believed that APTA PRESS Task Force efforts would address requirements for Tier I passenger equipment and that FRA intended to reexamine the requirements of this section in a future rulemaking with a view to applying emergency roof access requirements to Tier I passenger equipment. *Id.*

As discussed above, in § 238.123 FRA is applying emergency roof access requirements to Tier I passenger equipment and making the requirements the same for new Tier I and Tier II passenger cars. In doing so, FRA is revising § 238.441, including the section heading, to reconcile the requirements of these sections and thereby limit the application of these separate requirements in § 238.441 to existing Tier II passenger cars and to any Tier II power car (whether existing or new). At the same time, FRA is increasing the required dimensions of emergency roof access locations for existing Tier II passenger equipment, and providing general marking and instruction requirements for such equipment. FRA believes that existing Tier II passenger equipment is in compliance with these requirements, as revised, and that these revisions more closely approximate the requirements for new passenger equipment. FRA notes that all existing Tier II passenger cars were built with the same design, thus once an emergency responder has learned of the location of the roof access point on one passenger car, the responder has learned it for all passenger cars. Given this and the fact that there are a limited number of existing Tier II equipment, FRA has decided to limit the applicability of certain provisions to new Tier II passenger cars and power cars only.

Paragraph (a). Specifically, paragraph (a) has been revised to limit its applicability to Tier II passenger cars and power cars both ordered prior to April 1, 2009 and placed in service for the first time prior to April 1, 2011. Paragraph (a) has also been modified to revise the dimensions of the required opening from 18 inches by 24 inches, to 24 inches by 26 inches to be consistent with the requirements for Tier I passenger equipment. In addition, paragraph (a) has been revised to require that each emergency roof access location be conspicuously marked, and that legible and understandable operating instructions be posted at or near each such location.

The fundamental differences between the requirements in § 238.123 for new passenger cars and those contained in revised paragraph (a) of § 238.441 for existing Tier II passenger cars and Tier II power cars are as follows: The number of required emergency roof access locations (two in § 238.123, and one in § 238.441), the marking requirements (''conspicuously marked with

retroreflective material of contrasting color'' in § 238.123, and ''conspicuously marked'' in § 238.441), and the specifications for their location (detailed specifications are contained in § 238.123, while more general requirements are in § 238.441). These differences reflect the consideration given to existing equipment built in compliance with § 238.441 of the 1999 final rule, and also recognize that a requirement for two emergency roof access locations on a Tier II power car would not be reasonable given that the only normally occupied area in such a car is the cab compartment, in which only one emergency roof access location can be placed.

Paragraph (b). Paragraph (b) has been revised to make clear that each Tier II passenger car ordered on or after April 1, 2009, or placed in service for the first time on or after April 1, 2011, is required to comply with the emergency roof access requirements specified in § 238.123. Section 238.123 subjects new Tier I and Tier II passenger cars to the same emergency roof access requirements, and this revision to paragraph (b) is intended to conform with that section's requirements.

As specified in paragraph (b), new Tier II passenger cars are required to comply with the standards contained in § 238.123, which were developed exclusively for passenger cars.

Paragraph (c). Paragraph (c) has been added to address new Tier II power cars. FRA believes that Tier II power cars—both new and existing—should continue to be subject to emergency roof access requirements, and that the requirements for emergency roof access in § 238.123 should generally apply to this equipment as well. However, as § 238.123 was developed specifically for passenger cars, its requirements simply cannot be referenced in their entirety for Tier II power cars. In particular, unlike the requirements of § 238.123, only one emergency roof access location is necessary for a power car. As a result, FRA has specifically limited the portions of § 238.123 that are applicable to new power cars. Paragraph (c) requires that each power car ordered on or after April 1, 2009, or placed in service for the first time on or after April 1, 2011, have a minimum of one emergency roof access location, with a minimum opening of 26 inches longitudinally by 24 inches laterally, and comply with the emergency roof access requirements specified in §§ 238.123(b), (d), and (e).

Appendix A to Part 238—Schedule of Civil Penalties

This appendix contains a schedule of civil penalties to be used in connection with this part. Because such penalty schedules are statements of agency policy, notice and comment are not required prior to their issuance. *See* 5 U.S.C. 553(b)(3)(A). Nevertheless, FRA invited comment on the proposed penalty schedule, but no comment was received.

FRA has amended the penalty schedule to reflect changes made to part 238. Specifically, FRA has added entries for new §§ 238.114, 238.121, and 238.123; removed and reserved the entry for § 238.437; revised the entry for § 238.441; revised footnote 1; and added footnote 2 to clarify the use of penalty codes in the penalty schedule.

VI. Regulatory Impact and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing policies and procedures, and determined not to be significant under both Executive Order 12866 and DOT policies and procedures. *See* 44 FR 11034 (Feb. 26, 1979). FRA has prepared and placed in the docket a regulatory evaluation addressing the economic impact of this final rule. Document inspection and copying facilities are available at the Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Docket material is also available for inspection on the Internet at *http://www.regulations.gov.* Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at Office of Chief Counsel, Mail Stop 10, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590; please refer to Docket No. FRA 2006–25273.

Certain of the requirements reflect current industry practice, or restate existing regulations, or both. As a result, in calculating the costs of this final rule, FRA has neither included the costs of those actions that would be performed voluntarily in the absence of a regulation, nor has FRA included the costs of those actions that would be required by an existing regulation.

As presented in the following table, FRA estimates that the present value (PV) of the total 20-year costs which the industry would be expected to incur to comply with the requirements in this final rule is $15.5 million:

20-YEAR PV COSTS INCURRED

Description	20-year PV total ($)
Costs:	
(238.113) Emergency Window Exits:	
—Installation of pull handles/gaskets in two intermediate level windows	$4,050
—Replacement of instructions for window removal to ensure that potential hindrances are addressed	10,800
—Installation of pull handles/gaskets in four intermediate level windows	1,440
(238.114) Rescue Access Windows:	
—Installation of two windows per car	163,880
—Marking and instructions	3,840
(238.121) Emergency Communication:	
—Addition of second intercom transmission location	213,675
—Addition of outside speaker for public address system	101,565
(238.123) Emergency Roof Access.	
—Structural weak points—engineering redesign	80,000
—Structural weak points—additional materials	117,250
—Platform ladder	1,700
(238.303, 238.305, and 238.307) Exterior, Interior, and Periodic Inspection, Testing, and Maintenance	14,808,086
Total Costs	15,506,286

If over the 20-year period covered by the regulatory evaluation the equivalent of 7.7 lives would be saved as a result of implementing the requirements (from a combination of fatalities prevented, and injuries avoided or minimized), the final rule would be cost-justified by the safety benefits alone. FRA believes it is reasonable to expect that the safety benefits would exceed the costs of the requirements. Although passenger railroads offer the traveling public one of the safest forms of transportation available, the potential for injuries and loss of life in certain situations is very high. Nevertheless, FRA cannot predict with reasonable confidence the actual numbers of lives that would be saved. The number and severity of each future passenger train accident or incident would determine the ultimate effectiveness of the requirements; these cannot be forecast with a level of precision that would allow us to predict the actual need for the measures in the rule. Yet, FRA believes that the requirements protect passengers and crew members against known safety concerns in a cost-effective manner. These safety concerns are discussed in

detail, above, in the preamble to this final rule.

In particular, as discussed in Section III.C., the requirement for an intercom system on Tier I passenger trains is intended to allow passengers to communicate to the crew a medical emergency, report a fire onboard the train, or provide notification of other emergency situations as quickly as may be necessary. In fact, some passenger lives may have already been saved at least in part due to the availability of an intercom system because fellow passengers were able to use the intercom to alert a crewmember that a passenger onboard their car was experiencing a medical emergency. This led the crew to call the dispatcher to arrange for prompt medical attention at a nearby station. FRA believes that over the next 20 years the availability of an intercom system to passengers may save the life of one or more passengers experiencing a medical emergency.

The availability of an intercom system to passengers may also save the life of one or more passengers in other emergency situations. For example, on December 7, 1993, a gunman opened fire onboard an LIRR commuter train traveling between New Hyde Park and Garden City, NY, killing 6 people and injuring 19 others before he was overpowered by passengers. No intercom system was available to the passengers, and the train crew was not aware of the situation until the train arrived at the next station where police happened to be present on the platform. The availability of an intercom system to passengers in such a situation could allow passengers to provide notification to the crew in a timely manner so that the crew could contact the appropriate authorities to obtain emergency assistance and take other necessary action. This may include providing a direct warning over the train's public address system both to passengers on the train as well as to passengers in the immediate vicinity of the train on the station platform. The final rule does require that Tier I passenger trains be equipped with public address systems.

Further, over the past 20 years, other accidents and incidents have occurred where, if they were to recur, the availability of the safety features required by this final rule might save lives or prevent or minimize injuries. For instance, 11 lives were lost in a February 16, 1996 collision between a Maryland Rail Commuter (MARC) train and an Amtrak passenger train in Silver Spring, Maryland. The collision breached a fuel tank of an Amtrak locomotive, spraying fuel into the lead vehicle of the MARC train, which erupted in fire. The fire and collision trapped a number of people in the lead vehicle. Having rescue access windows available to emergency responders on the scene of such a situation in the future might facilitate the rescue of one or more passengers.

Similar accidents and incidents have unique circumstances that ultimately determine their severity in terms of casualties, and actual future events cannot be predicted with certainty. Nonetheless, it is possible that over the next 20 years the safety features required by this final rule will preserve life in a single event in an amount that exceeds the entire estimated costs of the rule.

B. Regulatory Flexibility Act and Executive Order 13272

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and Executive Order 13272 require a review of proposed and final rules to assess their impact on small entities. FRA has prepared and placed in the docket an Analysis of Impact on Small Entities (AISE) that assesses the small entity impact of this final rule. Document inspection and copying facilities are available at the Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Docket material is also available for inspection on the Internet at *http://www.regulations.gov.* Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at Office of Chief Counsel, Mail Stop 10, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590; please refer to Docket No. FRA 2006–25273.

The AISE developed in connection with this final rule concludes that this rule will not have a significant economic impact on a substantial number of small entities. The principal entities impacted by the rule are governmental jurisdictions or transit authorities—none of which is small for purposes of the United States Small Business Administration (*i.e.*, no entity serves a locality with a population less than 50,000). These entities also receive Federal transportation funds. Although these entities are not small, the level of costs incurred by each entity should generally vary in proportion to either the size of the entity, or the extent to which the entity purchases newly manufactured passenger equipment, or both. Tourist, scenic, excursion, and historic passenger railroad operations are exempt from the new requirements in the rule, and, therefore, these smaller operations will not incur any costs.

The final rule does impact passenger car manufacturers. However, these entities are principally large international corporations that are not considered small entities. Some manufacturers and suppliers of emergency signage and communication systems may be impacted by the rule, and these may be small entities. Yet, FRA believes that any impact on these entities will neither be significant nor negative, to the extent that the demand for products and services that they provide actually increases.

Having made these determinations, FRA certifies that this final rule is not expected to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act or Executive Order 13272.

C. Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the new information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR section—49 CFR	Respondent universe (railroads)	Total annual responses	Average time per response	Total annual burden hours (in minutes)	Total annual burden cost
238.113—Emergency Window Exits: Markings and Instructions.	22	662 markings	60/90/120	964	$0 (Included in Reg. Eval.).
238.114—Rescue Access Windows: Markings and Instructions.	22	1,092 markings	45	819	$0 (Included in Reg. Eval.).
238.121—Emergency Communication—Intercom System: Markings and Instructions.	22	116 markings	5	10	$410.

CFR section—49 CFR	Respondent universe (railroads)	Total annual responses	Average time per response	Total annual burden hours (in minutes)	Total annual burden cost
238.123—Emergency Roof Access: Markings and Instructions.	22	232 marked locations	30	116	$0 (Included in Reg. Eval.).
238.303—Exterior Calendar Day Mechanical Inspection of Passenger Equipment:					
—Repair/Replacement of Non-Complying Rescue Access Markings.	22	150 replacement markings.	20	50	$2,050.
—Records of Non-Complying Markings	22	150 records	2	5	$205.
238.305—Interior Calendar Day Mechanical Inspection of Passenger Cars:					
—Non-Complying Conditions of End Doors and Side Doors of Passenger Cars.	22	260 notifications + 260 notices.	1	9	$369.
—Written Notification to Train Crew of Inoperative/Non-Functioning Public Address and Intercom Systems.	22	300 notifications	1	5	$205.
—Records of Non-Compliance with Requirements of Section 238.305(d)(3).	22	300 records	2	10	$410.
238.307—Periodic Mechanical Inspection of Passenger Cars and Unpowered Vehicles Used in Passenger Trains: Replacement of Non-complying Emergency Roof Access Markings and Instructions.	22	32 replacement markings/instructions.	20	11	$451.

All estimates include the time for reviewing instructions, searching existing data sources, gathering or maintaining the needed data, and reviewing the information. For information or a copy of the paperwork package submitted to OMB, contact Mr. Robert Brogan, Information Clearance Officer, at (202) 493–6292 or via e-mail at *robert.brogan@dot.gov;* or contact Ms. Gina Christodoulou at (202) 493–6139 or via e-mail at *gina.christodoulou@dot.gov.*

OMB is required to make a decision concerning the collection of information requirements contained in this final rule between 30 and 60 days after publication of this final rule in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. Send any comments to: The Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, *Attn:* FRA OMB Desk Officer; or via e-mail at *oira_submissions@omb.eop.gov.* The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

FRA is not authorized to impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of the final rule.

D. Federalism Implications

FRA has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 13132, issued on August 4, 1999, which directs Federal agencies to exercise great care in establishing policies that have federalism implications. *See* 64 FR 43255. This final rule will not have a substantial direct effect on the States, on the relationship between the National government and the States, or on the distribution of power and responsibilities among various levels of government.

One of the fundamental Federalism principles, as stated in Section 2(a) of Executive Order 13132, is that ''Federalism is rooted in the belief that issues that are not national in scope or significance are most appropriately addressed by the level of government closest to the people.'' Congress expressed its intent that there be national uniformity of regulation concerning railroad safety matters when it enacted 49 U.S.C. 20106, which provides that all regulations prescribed by the Secretary of Transportation with respect to railroad safety matters and the Secretary of Homeland Security with respect to railroad security matters preempt any State law, regulation, or order covering the same subject matter, except a provision necessary to eliminate or reduce an essentially local safety or security hazard that is not incompatible with a Federal law, regulation, or order and that does not unreasonably burden interstate commerce. This intent was expressed even more specifically in 49 U.S.C. 20133, which mandated that the Secretary of Transportation prescribe ''regulations establishing minimum standards for the safety of cars used by railroad carriers to transport passengers'' and consider such matters as ''emergency response procedures and equipment'' before prescribing such regulations. This final rule is intended to add to and enhance the regulations issued pursuant to 49 U.S.C. 20133.

FRA notes that the above factors have been considered throughout the development of this final rule both internally and through consultation within the RSAC forum, as described in Section II of this preamble. The full RSAC, which, prior to the publication of the NPRM, reached consensus on the proposed rule text and recommended the proposal to FRA, has as permanent voting members two organizations representing State and local interests: AASHTO and ASRSM. As such, these State organizations concurred with the proposed requirements, which differ in only limited respects from the requirements contained in this final rule. The RSAC regularly provides recommendations to the FRA Administrator for solutions to regulatory issues that reflect significant input from its State members. To date, FRA has received no indication of concerns about the Federalism implications of this rulemaking from these representatives or from any other representative.

For the foregoing reasons, FRA believes that this final rule is in accordance with the principles and criteria contained in Executive Order 13132.

E. Environmental Impact

FRA has evaluated this final rule in accordance with its ''Procedures for Considering Environmental Impacts'' (FRA's Procedures) (*see* 64 FR 28545 (May 26, 1999)) as required by the National Environmental Policy Act (*see* 42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this final rule is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. *See* 64 FR 28547 (May 26, 1999). In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this final rule is not a major Federal action significantly affecting the quality of the human environment.

F. Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104–4, 2 U.S.C. 1531), each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and tribal governments and the private sector. The final rule will not result in the expenditure, in the aggregate, of $100,000,000 or more (as adjusted annually for inflation) in any one year, and thus preparation of such a statement is not required.

G. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' *See* 66 FR 28355 (May 22, 2001). Under the Executive Order, a ''significant energy action'' is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this final rule in accordance with Executive Order 13211. FRA has determined that this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a ''significant energy action'' within the meaning of Executive Order 13211.

H. Trade Impact

The Trade Agreements Act of 1979 (Pub. L. 96–39, 19 U.S.C. 2501 *et seq.*) prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

FRA has assessed the potential effect of this final rule on foreign commerce and believes that its requirements are consistent with the Trade Agreements Act. The requirements imposed are safety standards, which, as noted, are not considered unnecessary obstacles to trade. Moreover, FRA has sought, to the extent practicable, to state the requirements in terms of the performance desired, rather than in more narrow terms restricted to a particular design, so as not to limit different, compliant designs by any manufacturer—foreign or domestic.

For related discussion on the international effects of part 238, please see the preamble to the May 12, 1999 Passenger Equipment Safety Standards final rule on the topic of ''United States international treaty obligations.'' *See* 64 FR 25545.

I. Privacy Act

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

List of Subjects

49 CFR Part 223

Glazing standards, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 238

Incorporation by reference, Passenger equipment, Penalties, Railroad safety, Reporting and recordkeeping requirements.

The Rule

■ For the reasons discussed in the preamble, parts 223 and 238 of chapter II, subtitle B of title 49, Code of Federal Regulations are amended as follows:

PART 223—[AMENDED]

■ 1. The authority citation for part 223 is revised to read as follows:

Authority: 49 U.S.C. 20102–20103, 20133, 20701–20702, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

Subpart A—General

■ 2. Section 223.5 is amended by removing the definitions of ''Emergency responder'' and ''Passenger train service''; and by revising the definition of ''Emergency window'' to read as follows:

§ 223.5 Definitions.

* * * * *

Emergency window means the segment of a side-facing glazing panel that has been designed to permit rapid and easy removal from inside a passenger car in an emergency situation.

* * * * *

Subpart B—Specific Requirements

■ 3. Section 223.9 is amended by removing paragraph (d); and by revising paragraph (c) to read as follows:

§ 223.9 Requirements for new or rebuilt equipment.

* * * * *

(c) Passenger cars, including self-propelled passenger cars, built or rebuilt after June 30, 1980, must be equipped with certified glazing in all windows and at least four emergency windows.

■ 4. Appendix B to part 223 is amended by revising the entry for section 223.9; and by revising footnote 1 to read as follows:

Appendix B to Part 223—Schedule of Civil Penalties [1]

Section	Violation	Willful violation
223.9 New or rebuilt equipment:		
(a) Locomotives	$2,500	$5,000
(b) Cabooses	2,500	5,000
(c) Passenger cars	2,500	5,000

* * * * *

PART 238—[AMENDED]

■ 5. The authority citation for part 238 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20133, 20141, 20302–20303, 20306, 20701–20702, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

Subpart A—General

■ 6. Section 238.5 is amended by revising the definition of ''Emergency window'' and by adding the definitions of ''Dual-function window,'' ''Emergency responder,'' ''Intercom,'' ''Intercom system,'' ''Intermediate level,'' ''Main level,'' ''PA System,'' ''Passenger compartment,'' ''Rescue access window,'' ''Retroreflective material,'' and ''Seating area'' to read as follows:

§ 238.5 Definitions.

* * * * *

Dual-function window means a window that is intended to serve as both an emergency window exit and a rescue access window and that meets the applicable requirements set forth in both §§ 238.113 and 238.114.

* * * * *

Emergency responder means a member of a police or fire department, or other organization involved with public safety charged with providing or coordinating emergency services, who responds to a passenger train emergency.

Emergency window means the segment of a side-facing glazing panel that has been designed to permit rapid and easy removal from inside a passenger car in an emergency situation.

* * * * *

Intercom means a device through which voice communication is transmitted and received.

Intercom system means a two-way, voice communication system.

* * * * *

Intermediate level means a level of a multi-level passenger car that is used for passenger seating and is normally located between two main levels. An intermediate level normally contains two, separate seating areas, one at each end of the car, and is normally connected to each main level by stairs.

* * * * *

Main level means a level of a passenger car that contains a passenger compartment whose length is equal to or greater than half the length of the car.

* * * * *

PA system (or *public address system*) means a one-way, voice communication system.

* * * * *

Passenger compartment means an area of a passenger car that consists of a seating area and any vestibule that is connected to the seating area by an open passageway.

* * * * *

Rescue access window means a side-facing exterior window intended for use by emergency responders to gain access to passengers in an emergency situation.

* * * * *

Retroreflective material means a material that is capable of reflecting light rays back to the light source and that conforms to the specifications for Type I Sheeting as specified in ASTM International Standard D 4956–07, ''Standard Specification for Retroreflective Sheeting for Traffic Control.'' The Director of the Federal Register approves the incorporation by reference of this standard in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of the incorporated standard from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959. You may inspect a copy of the incorporated standard at the Federal Railroad Administration, Docket Clerk, 1200 New Jersey Avenue, SE., Washington, DC, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

* * * * *

Seating area means an area of a passenger car that normally contains passenger seating.

* * * * *

■ 7. Section 238.17 is amended by revising the introductory text of paragraphs (b) and (c) to read as follows:

§ 238.17 Movement of passenger equipment with other than power brake defects.

* * * * *

(b) *Limitations on movement of passenger equipment containing defects found at time of calendar day inspection.* Except as provided in §§ 238.303(e)(15), (e)(17) and (e)(18), 238.305(c) and (d), and 238.307(c)(1), passenger equipment containing a condition not in conformity with this part at the time of its calendar day mechanical inspection may be moved from that location for repair if all of the following conditions are satisfied:

* * * * *

(c) *Limitations on movement of passenger equipment that develops defects en route.* Except as provided in §§ 238.303(e)(15), (e)(17) and (e)(18), 238.305(c), 238.307(c)(1), and 238.503(f), passenger equipment that develops en route to its destination,

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $27,000 for any violation where circumstances warrant. See 49 U.S.C. 21301, 21304, and 49 CFR part 209, appendix A. If more than one item is listed as a type of violation of a given section, each item is also designated by a ''penalty code,'' which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

after its calendar day mechanical inspection is performed and before its next calendar day mechanical inspection is performed, any condition not in compliance with this part, other than a power brake defect, may be moved only if the railroad complies with all of the following requirements or, if applicable, the specified requirements in paragraph (e) of this section:

* * * * *

Subpart B—Safety Planning and General Requirements

■ 8. Section 238.113 is revised to read as follows:

§ 238.113 Emergency window exits.

(a) Number and location. Except as provided in paragraph (a)(3) of this section, the following requirements in this paragraph (a) apply on or after April 1, 2008—

(1) *Single-level passenger cars.* Each single-level passenger car shall have a minimum of four emergency window exits. At least one emergency window exit shall be located in each side of each end (half) of the car, in a staggered configuration where practical. (*See* Figure 1 to this subpart; *see also* Figures 1b and 1c to this subpart.)

(2) *Multi-level passenger cars—main levels.* Each main level in a multi-level passenger car is subject to the same requirements specified for single-level passenger cars in paragraph (a)(1) of this section.

(3) *Multi-level passenger cars—levels with seating areas other than main levels.*

(i) Except as provided in paragraphs (a)(3)(ii) and (iii) of this section, on or after August 1, 2009, any level other than a main level used for passenger seating in a multi-level passenger car, such as an intermediate level, shall have a minimum of two emergency window exits in each seating area. The emergency window exits shall be accessible to passengers in the seating area without requiring movement through an interior door or to another level of the car. At least one emergency window exit shall be located in each side of the seating area. An emergency window exit may be located within an exterior side door in the passenger compartment if it is not practical to place the window exit in the side of the seating area. (*See* Figures 2 and 2a to this subpart.)

(ii) Only one emergency window exit is required in a seating area in a passenger compartment if:

(A) It is not practical to place an emergency window exit in a side of the passenger compartment due to the need to provide accessible accommodations under the Americans with Disabilities Act of 1990;

(B) There are no more than four seats in the seating area; and

(C) A suitable, alternate arrangement for emergency egress is provided.

(iii) For passenger cars ordered prior to April 1, 2009, and placed in service prior to April 1, 2011, only one emergency window exit is required in a seating area in a passenger compartment if—

(A) It is not practicable to place a window exit in a side of the passenger compartment (due to the presence of a structure such as a bathroom, electrical locker, or kitchen); and

(B) There are no more than eight seats in the seating area.

(4) *Cars with a sleeping compartment or similar private compartment.* Each level of a passenger car with a sleeping compartment or a similar private compartment intended to be occupied by a passenger or train crewmember shall have at least one emergency window exit in each such compartment. For purposes of this paragraph (a)(4), a bathroom, kitchen, or locomotive cab is not considered a ''compartment.''

(b) *Ease of operability.* On or after November 8, 1999, each emergency window exit shall be designed to permit rapid and easy removal from the inside of the car during an emergency situation without requiring the use of a tool or other implement.

(c) *Dimensions.* Except as provided in paragraphs (c)(1) and (c)(2) of this section, each emergency window exit in a passenger car, including a sleeping car, ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002, shall have an unobstructed opening with minimum dimensions of 26 inches horizontally by 24 inches vertically. A seatback is not an obstruction if it can be moved away from the window opening without using a tool or other implement.

(1) *Emergency window exits in exterior side doors.* An emergency window exit located within an exterior side door, in accordance with the requirements of paragraph (a)(3)(i) of this section, may have an unobstructed opening with minimum dimensions of 24 inches horizontally by 26 inches vertically.

(2) *Additional emergency window exits.* Any emergency window exit in addition to the minimum number required by paragraph (a) of this section that has been designated for use by the railroad need not comply with the minimum dimension requirements in paragraph (c) of this section, but must otherwise comply with all requirements in this part applicable to emergency window exits.

(d) *Marking and instructions.* (1) Each emergency window exit shall be conspicuously and legibly marked with luminescent material on the inside of each car to facilitate passenger egress.

(2) Legible and understandable operating instructions, including instructions for removing the window, shall be posted at or near each such window exit. If window removal may be hindered by the presence of a seatback, headrest, luggage rack, or other fixture, the instructions shall state the method for allowing rapid and easy removal of the window, taking into account the fixture(s), and this portion of the instructions may be in written or pictorial format.

■ 9. Section 238.114 is added to read as follows:

§ 238.114 Rescue access windows.

(a) *Number and location.* Except as provided in paragraph (a)(1)(ii) of this section, the following requirements in this paragraph (a) apply on or after April 1, 2008—

(1) *Single-level passenger cars.* Except as provided in this paragraph (a)(1) and in paragraphs (a)(1)(i), (a)(1)(ii), and (a)(5) of this section, each single-level passenger car shall have a minimum of two rescue access windows. At least one rescue access window shall be located in each side of the car entirely within 15 feet of the car's centerline, or entirely within 7½ feet of the centerline if the car does not exceed 45 feet in length. (*See* Figure 1a to this subpart; *see also* Figures 1b and 1c to this subpart.) If the seating level is obstructed by an interior door or otherwise partitioned into separate seating areas, each separate seating area shall have a minimum of one rescue access window in each side of the seating area, located as near to the center of the car as practical.

(i) For a single-level passenger car ordered prior to April 1, 2009, and placed in service prior to April 1, 2011, rescue access windows may be located farther than the above prescribed distances from the car's centerline, or located within exterior side doors, or both, if at least one rescue access window is located within each side of each end (half) of the same passenger compartment.

(ii) For a single-level passenger car ordered prior to September 8, 2000, and placed in service prior to September 9, 2002, the requirements of paragraph (a)(1) apply on or after August 1, 2009 if the car has at least two exterior side doors (or door leaves), each with a

manual override device, and such doors (or door leaves) are located one on each side of the car, in opposite ends (halves) of the car (*i.e.*, in diagonally-opposite quadrants). The manual override device shall be—

(A) Capable of releasing the door (or door leaf) to permit it to be opened without power from outside the car;

(B) Located adjacent to the door (or door leaf) that it controls; and

(C) Designed and maintained so that a person can access the override device from outside the car without using a tool or other implement.

(2) *Multi-level passenger cars—main levels.* Each main level in a multi-level passenger car is subject to the same requirements specified for single-level passenger cars in paragraph (a)(1) of this section, with the exception of paragraph (a)(1)(ii), which is not applicable.

(3) *Multi-level passenger cars—levels with seating areas other than main levels.* (i) Except as provided in paragraphs (a)(3)(ii) and (a)(3)(iii) of this section, any level other than a main level used for passenger seating in a multi-level passenger car, such as an intermediate level, shall have a minimum of two rescue access windows in each seating area. The rescue access windows shall permit emergency responders to gain access to passengers in the seating area without requiring movement through an interior door or to another level of the car. At least one rescue access window shall be located in each side of the seating area. A rescue access window may be located within an exterior side door in the passenger compartment if it is not practical to place the access window in the side of the seating area. (*See* Figures 2 and 2a of this subpart.)

(ii) Only one rescue access window is required in a seating area in a passenger compartment if—

(A) It is not practical to place a rescue access window in a side of the passenger compartment due to the need to provide accessible accommodations under the Americans with Disabilities Act of 1990;

(B) There are no more than four seats in the seating area; and

(C) A suitable, alternate arrangement for rescue access is provided.

(iii) For passenger cars ordered prior to April 1, 2009, and placed in service prior to April 1, 2011, only one rescue access window is required in a seating area in a passenger compartment if—

(A) It is not practicable to place an access window in a side of the passenger compartment (due to the presence of a structure such as a bathroom, electrical locker, or kitchen); and

(B) There are no more than eight seats in the seating area.

(4) *Cars with a sleeping compartment or similar private compartment.* Each level of a passenger car with a sleeping compartment or a similar private compartment intended to be occupied by a passenger or train crewmember shall have a minimum of one rescue access window in each such compartment. For purposes of this paragraph, a bathroom, kitchen, or locomotive cab is not considered a ''compartment.''

(5) *Dual-function windows.* If, on any level of a passenger car, the emergency window exits installed to meet the minimum requirements of § 238.113 are also intended to function as rescue access windows, the minimum requirements for the number and location of rescue access windows in paragraphs (a)(1) through (a)(4) of this section are also met for that level.

(b) *Ease of operability.* On or after April 1, 2008, each rescue access window must be capable of being removed without unreasonable delay by an emergency responder using either—

(1) A provided external mechanism; or

(2) Tools or implements that are commonly available to the responder in a passenger train emergency.

(c) *Dimensions.* Each rescue access window in a passenger car, including a sleeping car, ordered on or after April 1, 2009, or placed in service for the first time on or after April 1, 2011, shall have an unobstructed opening with minimum dimensions of 26 inches horizontally by 24 inches vertically. A rescue access window located within an exterior side door, in accordance with the requirements of paragraph (a)(3)(i) of this section, may have an unobstructed opening with minimum dimensions of 24 inches horizontally by 26 inches vertically. A seatback is not an obstruction if it can be moved away from the window opening without using a tool or other implement.

(d) *Marking and instructions.* Each rescue access window shall be marked with retroreflective material. A unique and easily recognizable symbol, sign, or other conspicuous marking shall also be used to identify each such window. Legible and understandable window-access instructions, including instructions for removing the window, shall be posted at or near each rescue access window.

■ 10. Add new § 238.121 to read as follows:

§ 238.121 Emergency communication.

(a) *PA system (public address system).* (1) *Existing Tier I passenger cars.* On or after January 1, 2012, each Tier I passenger car shall be equipped with a PA system that provides a means for a train crewmember to communicate by voice to passengers of his or her train in an emergency situation.

(2) *New Tier I and all Tier II passenger cars.* Each Tier I passenger car ordered on or after April 1, 2008, or placed in service for the first time April 1, 2010, and all Tier II passenger cars shall be equipped with a PA system that provides a means for a train crewmember to communicate by voice to passengers of his or her train in an emergency situation. The PA system shall also provide a means for a train crewmember to communicate by voice in an emergency situation to persons in the immediate vicinity of his or her train (*e.g.*, persons on the station platform). The PA system may be part of the same system as the intercom system.

(b) *Intercom system.* (1) *New Tier I and all Tier II passenger cars.* Each Tier I passenger car ordered on or after April 1, 2008, or placed in service for the first time on or after April 1, 2010, and all Tier II passenger cars shall be equipped with an intercom system that provides a means for passengers and crewmembers to communicate by voice with each other in an emergency situation. Except as further specified, at least one intercom that is accessible to passengers without using a tool or other implement shall be located in each end (half) of each car. If any passenger car does not exceed 45 feet in length, or if a Tier II passenger car was ordered prior to May 12, 1999, only one such intercom is required. The intercom system may be part of the same system as the PA system.

(2) *Marking and instructions.* The following requirements apply to each Tier I passenger car on or after April 1, 2010 and to all Tier II passenger cars:

(i) The location of each intercom intended for passenger use shall be conspicuously marked with luminescent material; and

(ii) Legible and understandable operating instructions shall be posted at or near each such intercom.

(c) *Back-up power.* PA and intercom systems shall have a back-up power system capable of—

(1) Operating in all equipment orientations within 45 degrees of vertical;

(2) Operating after the initial shock of a collision or derailment resulting in the following individually applied accelerations:

(i) Longitudinal: 8g;

(ii) Lateral: 4g; and

(iii) Vertical: 4g; and

(3) Powering each system to allow intermittent emergency communication for a minimum period of 90 minutes. Intermittent communication shall be considered equivalent to continuous communication during the last 15 minutes of the 90-minute minimum period.

■ 11. Section 238.123 is added to read as follows:

§ 238.123 Emergency roof access.

Except as provided in § 238.441 of this chapter—

(a) *Number and dimensions.* Each passenger car ordered on or after April 1, 2009, or placed in service for the first time on or after April 1, 2011, shall have a minimum of two emergency roof access locations, each with a minimum opening of 26 inches longitudinally (*i.e.*, parallel to the longitudinal axis of the car) by 24 inches laterally.

(b) *Means of access.* Emergency roof access shall be provided by means of a hatch, or a conspicuously marked structural weak point in the roof for access by properly equipped emergency response personnel.

(c) *Location.* Emergency roof access locations shall be situated as practical so that when a car is on its side—

(1) One emergency access location is wholly within each half of the roof as divided top from bottom; and

(2) One emergency access location is wholly within each half of the roof as divided left from right. (*See* Figure 3 to this subpart.)

(d) *Obstructions.* The ceiling space below each emergency roof access location shall be free from wire, cabling, conduit, and piping. This space shall also be free of any rigid secondary structure (*e.g.*, a diffuser or diffuser support, lighting back fixture, mounted PA equipment, or luggage rack) where practicable. If emergency roof access is provided by means of a hatch, it shall be possible to push interior panels or liners out of their retention devices and into the interior of the vehicle after removing the hatch. If emergency roof access is provided by means of a structural weak point, it shall be permissible to cut through interior panels, liners, or other non-rigid secondary structures after making the cutout hole in the roof, provided any such additional cutting necessary to access the interior of the vehicle permits a minimum opening of the dimensions specified in paragraph (a) to be maintained.

(e) *Marking and instructions.* Each emergency roof access location shall be conspicuously marked with retroreflective material of contrasting color. As further specified, legible and understandable instructions shall be posted at or near each such location. If emergency roof access is provided by means of a structural weak point—

(1) The retroreflective material shall conspicuously mark the line along which the roof skin shall be cut; and

(2) A sign plate with a retroreflective border shall also state as follows:

CAUTION—DO NOT USE FLAME CUTTING DEVICES

CAUTION—WARN PASSENGERS BEFORE CUTTING

CUT ALONG DASHED LINE TO GAIN ACCESS

ROOF CONSTRUCTION—[STATE RELEVANT DETAILS]

■ 12. Subpart B to part 238 is amended by adding Figures 1, 1a, 1b, 1c, 2, 2a, 2b, and 3 to read as follows:

Sec.

Figure 1 to Subpart B of Part 238—Example of Location and Staggering of Emergency Window Exits—§ 238.113

Figure 1A to Subpart B of Part 238—Example of Location of Rescue Access Windows—§ 238.114

Figure 1B to Subpart B of Part 238—Example of Location and Staggering of Emergency Window Exits and Location of Rescue Access Windows—§§ 238.113 and 238.114

Figure 1C to Subpart B of Part 238—Example of a Passenger Compartment Including a Vestibule Connected by an Open Passageway and Excluding a Vestibule Separated by an Interior Door—§§ 238.113 and 238.114

Figure 2 to Subpart B of Part 238—Example of a Multi-Level Car Complying with Window Location and Staggering Requirements—§§ 238.113 and 238.114

Figure 2A to Subpart B of Part 238—Example of an Intermediate Level Seating Area of a Multi-Level Car Complying With Window Location Requirements—§§ 238.113 and 238.114

Figure 2B to Subpart B of Part 238—Example of an Intermediate Level Seating Area of a Multi-Level Car Complying With Window Location Requirements—§§ 238.113 and 238.114

Figure 3 to Subpart B of Part 238—Example of Location and Marking of Structural Weak Points on Roof of Passenger Car—§ 238.123

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Figure 1 to Subpart B of Part 238—Example of Location and Staggering of Emergency Window Exits—§ 238.113

Top and Side View Depictions of a Single-Level Passenger Car

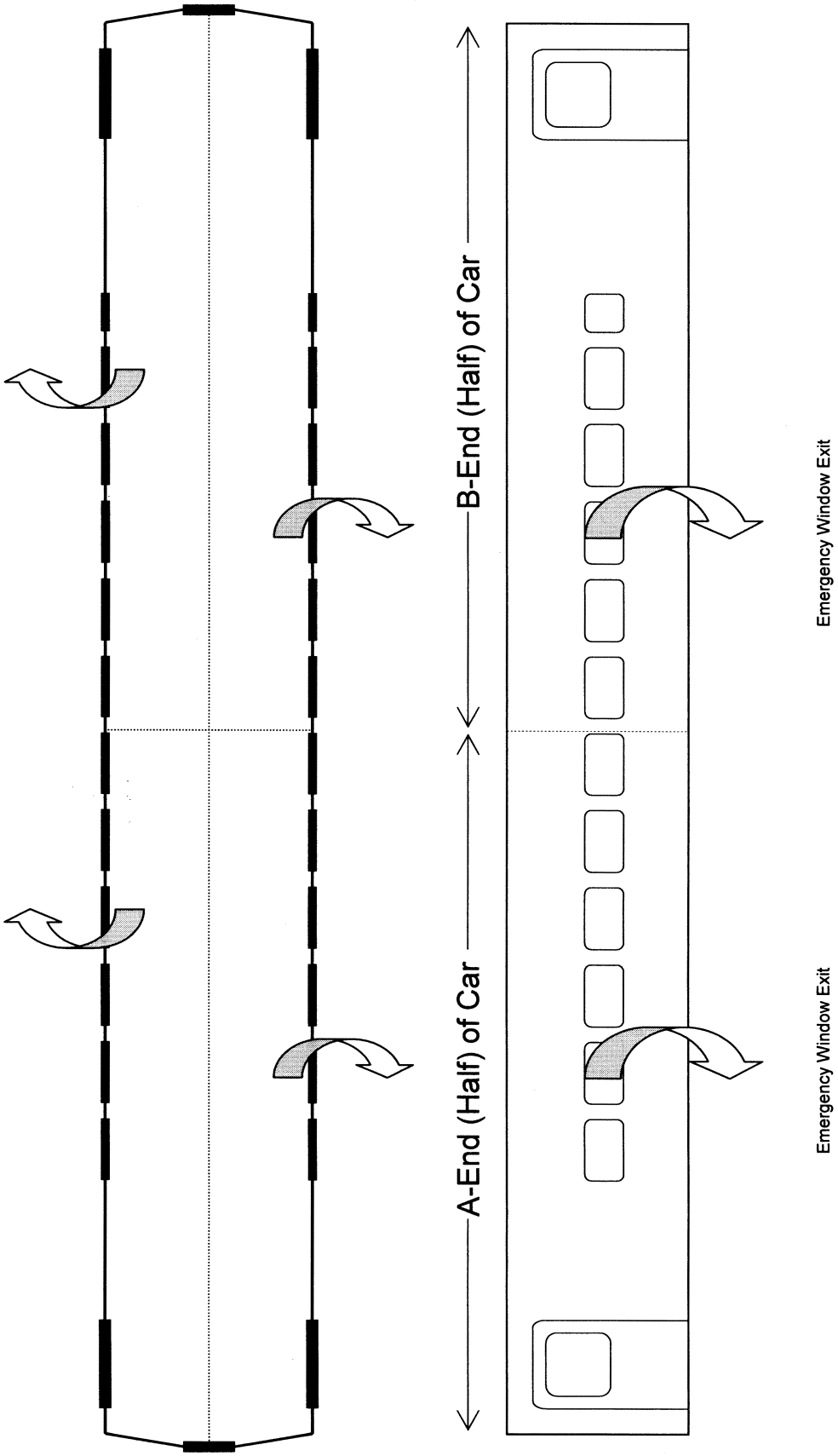


Figure 1a to Subpart B of Part 238—Example of Location of Rescue Access Windows—§ 238.114

Top and Side View Depictions of a Single-Level Passenger Car

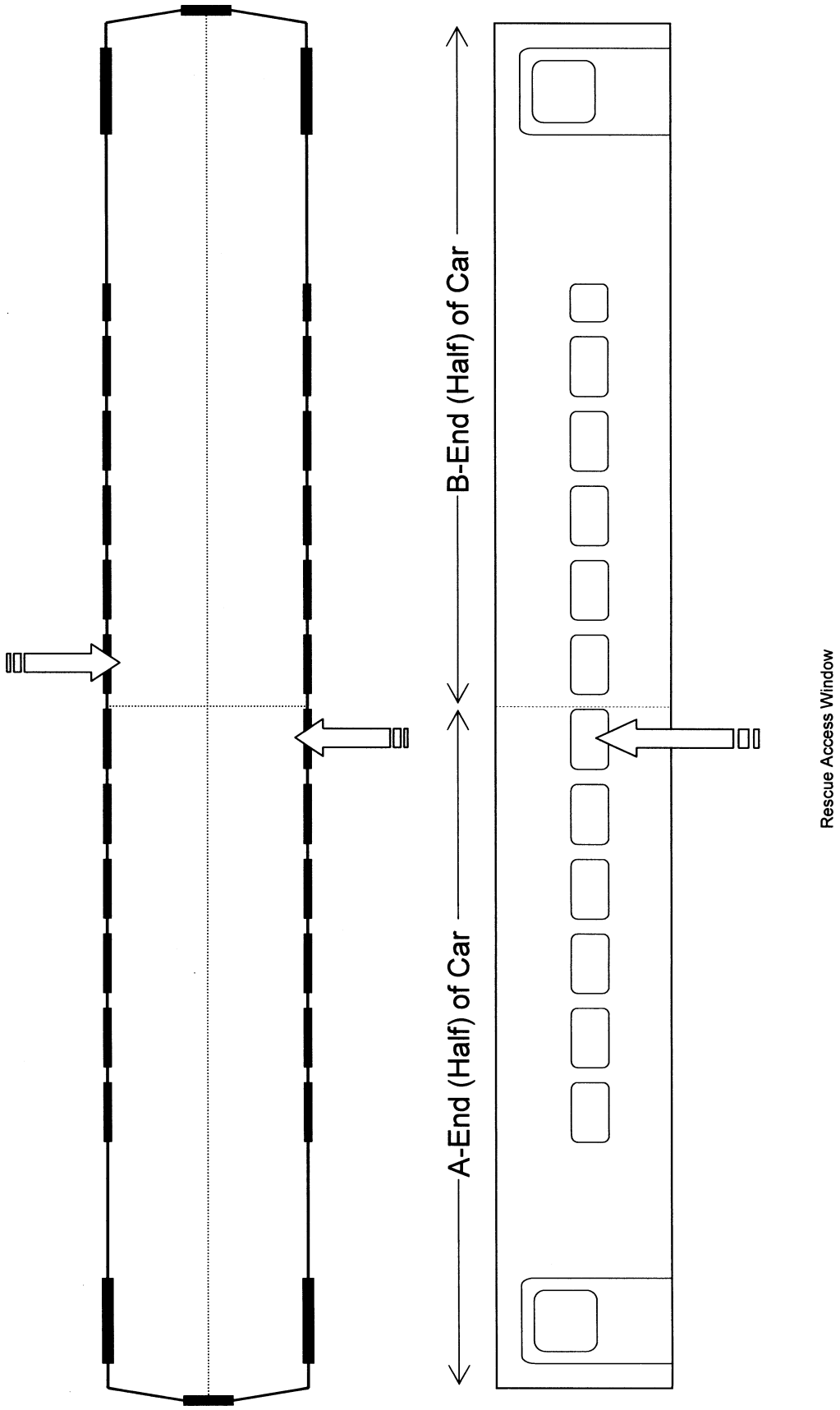


Figure 1b to Subpart B of Part 238—Example of Location and Staggering of Emergency Window Exits and Location of Rescue Access Windows—§§ 238.113 and 238.114

Top and Side View Depictions of a Single-Level Passenger Car

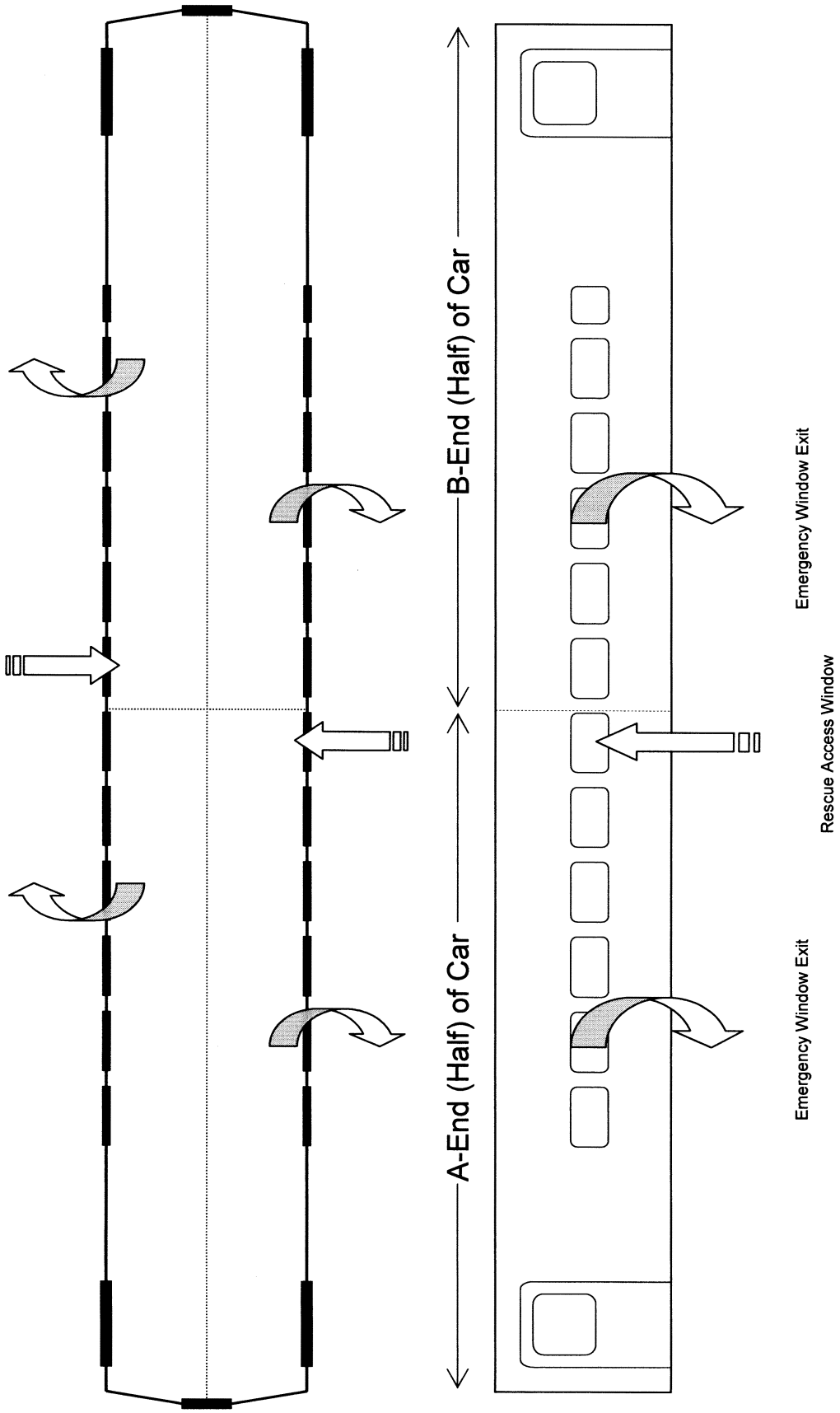


Figure 1c to Subpart B of Part 238—Example of a Passenger Compartment Including a Vestibule Connected by an Open Passageway and Excluding a Vestibule Separated by an Interior Door—§§ 238.113 and 238.114

Top and Side View Depictions of a Single-Level Passenger Car

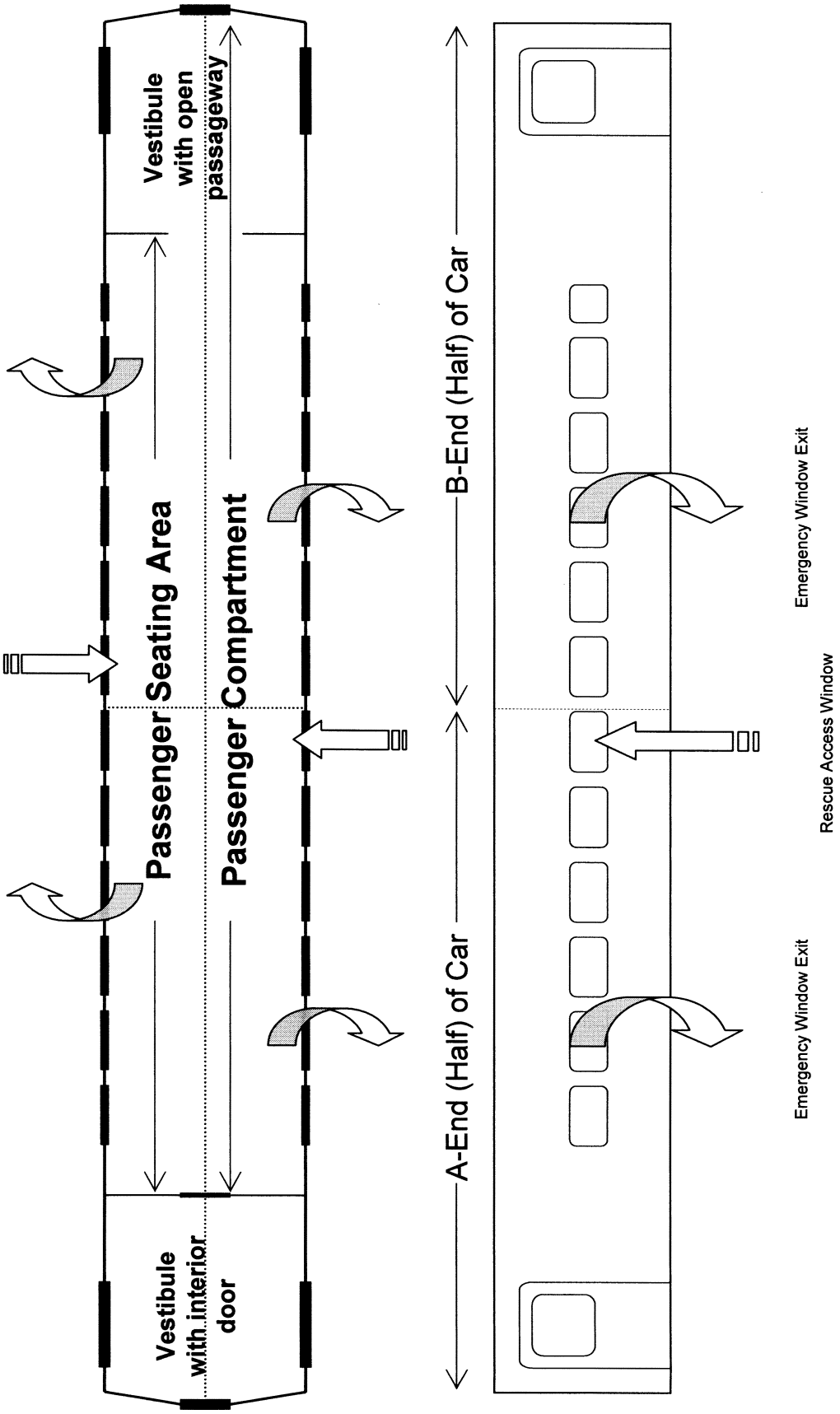


Figure 2 to Subpart B of Part 238—Example of a Multi-Level Car Complying with Window Location and Staggering Requirements—§§ 238.113 and 238.114

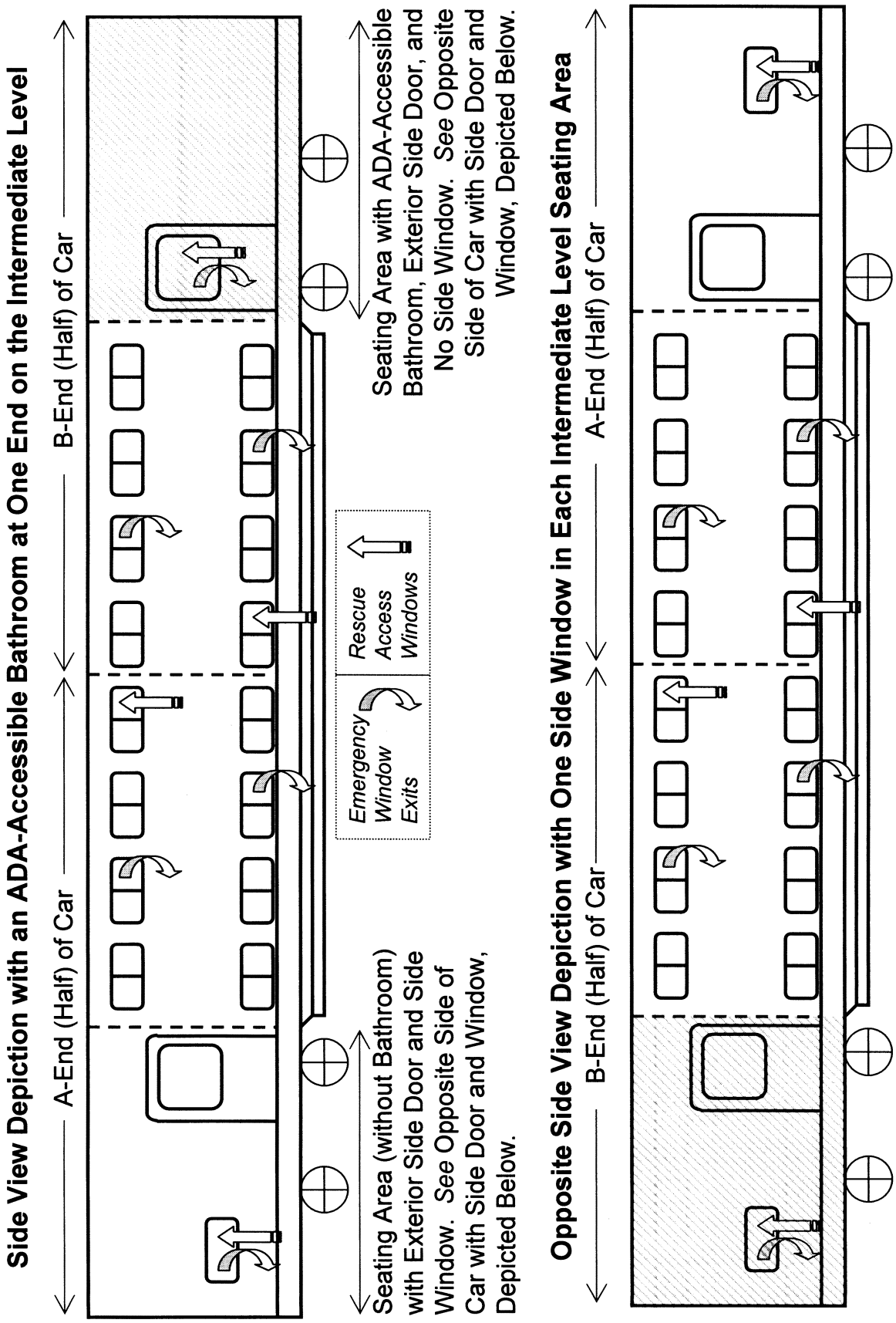
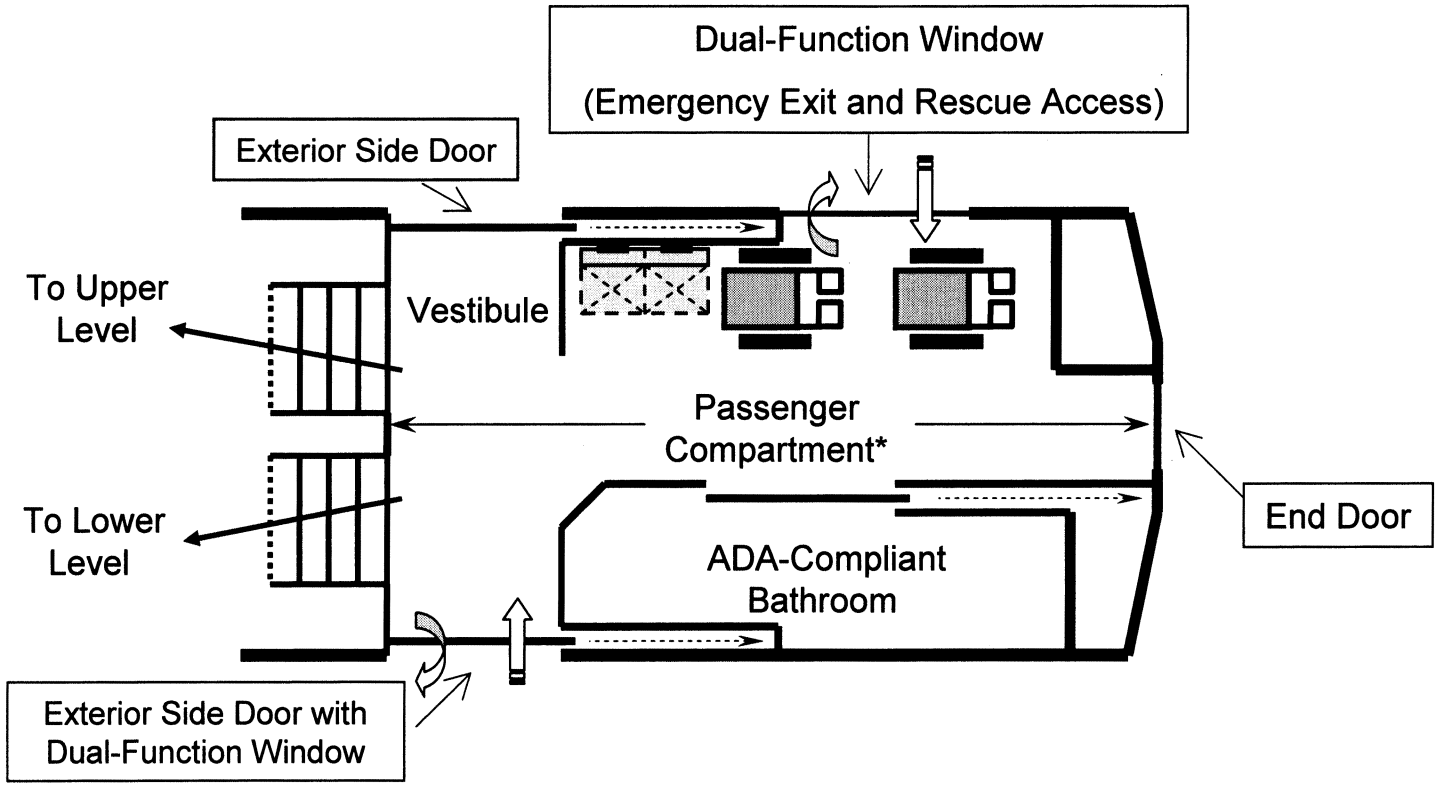


Figure 2a to Subpart B of Part 238—Example of an Intermediate Level Seating Area of a Multi-Level Car Complying with Window Location Requirements—§§ 238.113 and 238.114

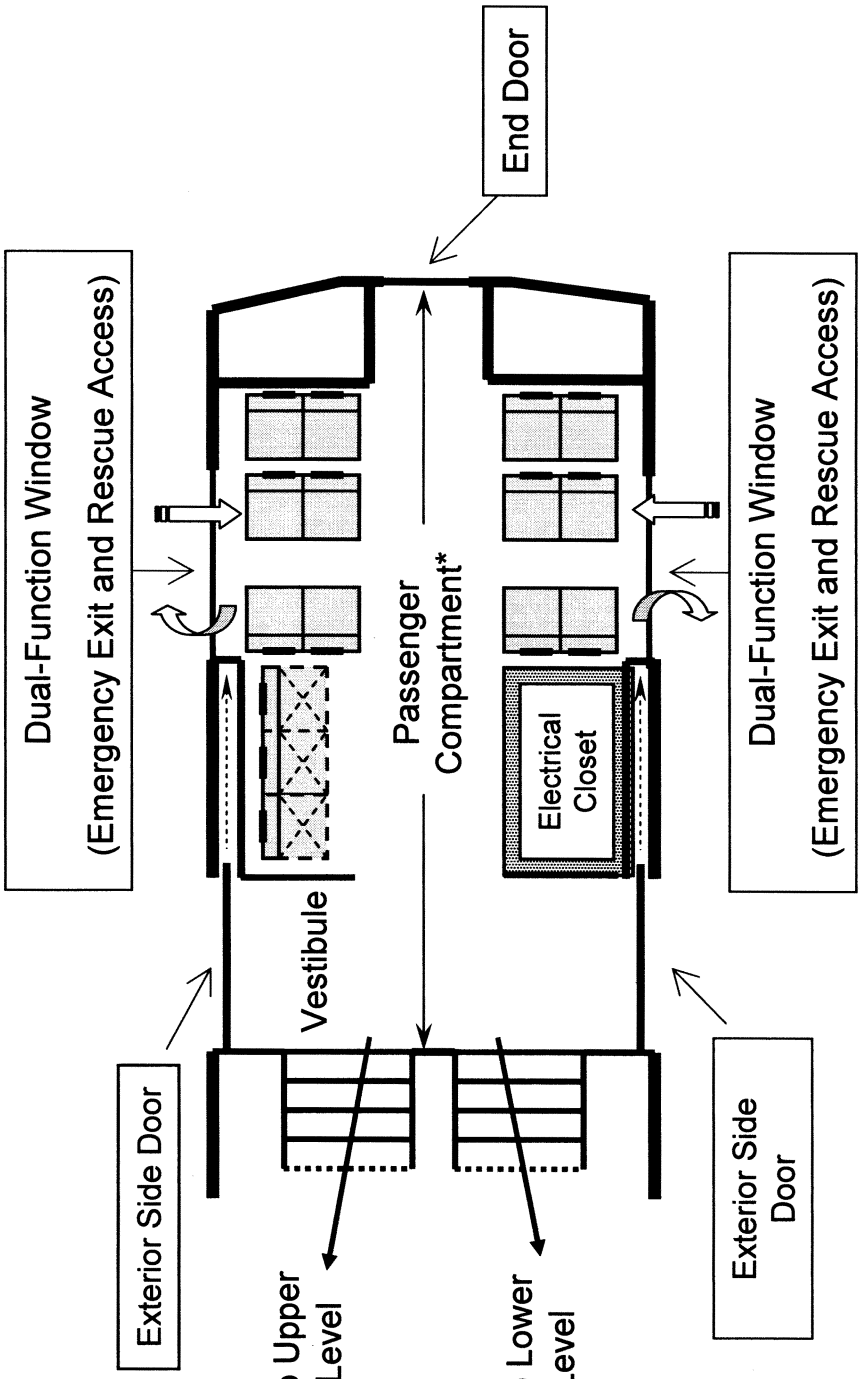
Top View Depiction of an Intermediate Level Seating Area with an ADA-Accessible Bathroom



* The passenger compartment in this example includes the vestibule and extends to the point where the stairs begin because there is an open passageway leading to the vestibule. If an interior door separates the vestibule from the seating area, the passenger compartment would only extend to the interior vestibule door.

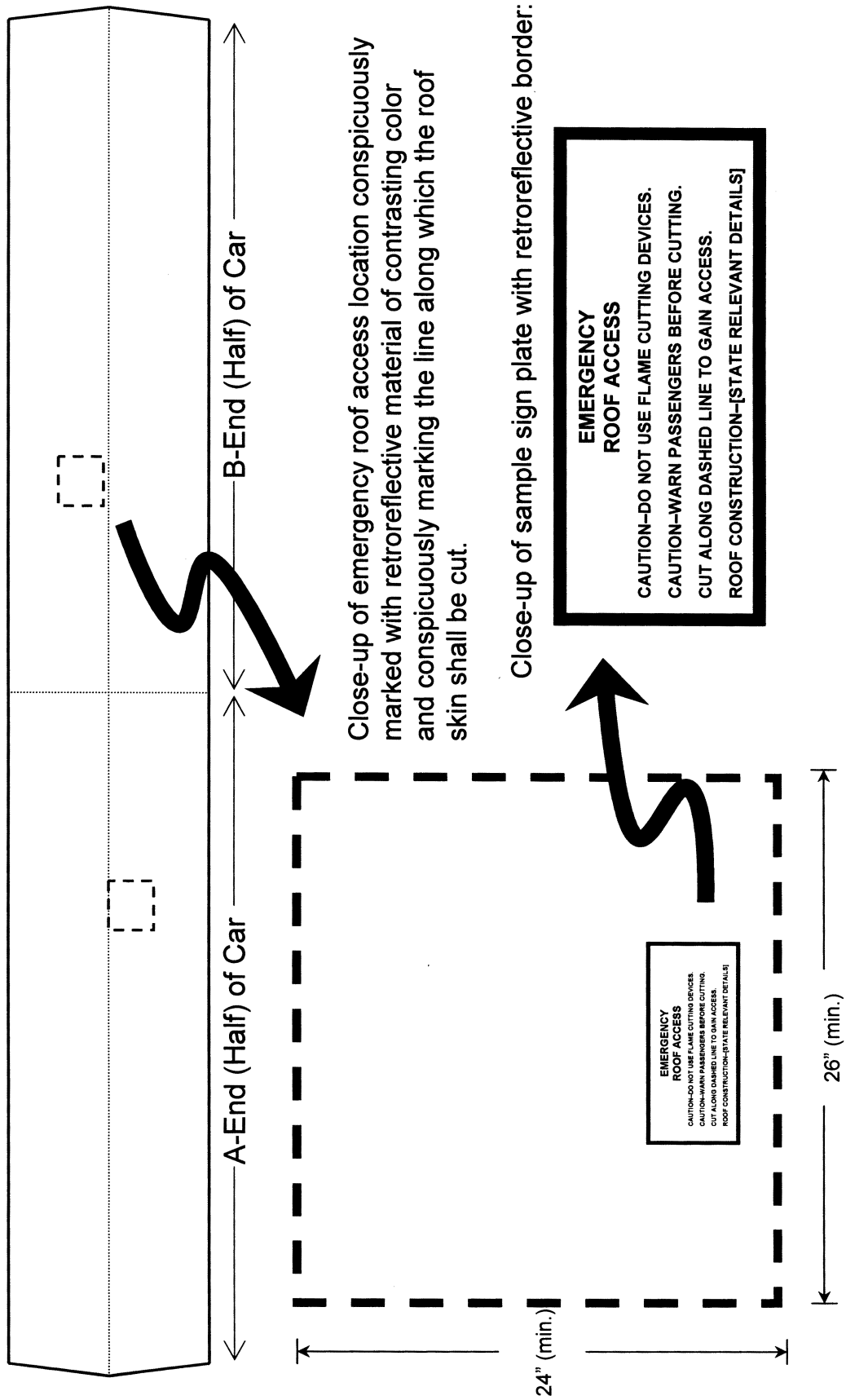
Figure 2b to Subpart B of Part 238—Example of an Intermediate Level Seating Area of a Multi-Level Car Complying with Window Location Requirements—§§ 238.113 and 238.114

Top View Depiction of an Intermediate Level Seating Area with Two Side Windows



* The passenger compartment in this example includes the vestibule and extends to the point where the stairs begin because there is an open passageway leading to the vestibule. If an interior door separates the vestibule from the seating area, the passenger compartment would only extend to the interior vestibule door.

Figure 3 to Subpart B of Part 238—Example of Location and Marking of Structural Weak Points on Roof of Passenger Car—§ 238.123



BILLING CODE 4910–06–C

Subpart D—Inspection, Testing, and Maintenance Requirements for Tier I Passenger Equipment

■ 13. Section 238.303 is amended by adding paragraph (e)(18) to read as follows:

§ 238.303 Exterior calendar day mechanical inspection of passenger equipment.

* * * * *

(e) * * *

(18) All rescue-access-related exterior markings, signage, and instructions required by § 238.114 and § 239.107(a) of this chapter shall be in place and, as applicable, conspicuous or legible, or both.

(i) Except as provided in paragraphs (e)(18)(ii) and (iii) of this section, passenger equipment that has any required rescue-access-related exterior marking, signage, or instruction that is missing, illegible, or inconspicuous may remain in passenger service until no later than the equipment's fourth exterior calendar day mechanical inspection or next periodic mechanical inspection required under § 238.307, whichever occurs first, after the noncomplying condition is discovered, where the car shall be repaired or removed from service.

(ii) A passenger car having more than 50 percent of the windows on a side of a level of the car designated and properly marked for rescue access that has any required rescue-access-related exterior marking, signage, or instruction that is missing, illegible, or inconspicuous on any of the other windows on that side and level of the car may remain in passenger service until no later than the car's next periodic mechanical inspection required under § 238.307, where the car shall be repaired or removed from service.

(iii) A passenger car that is a sleeping car that has more than two consecutive windows with any required rescue access-related exterior marking, signage, or instruction at or near their locations that is missing, illegible, or inconspicuous may remain in passenger service until no later than the car's next periodic mechanical inspection required under § 238.307, where the car shall be repaired or removed from service.

(iv) A record shall be maintained of any noncomplying marking, signage, or instruction described in paragraphs (e)(18)(i) through (iii) of this section that contains the date and time that the defective condition was first discovered. This record shall be retained until all necessary repairs are completed.

* * * * *

■ 14. Section 238.305 is amended by revising paragraph (c) introductory text and paragraph (c)(10), and by adding paragraphs (c)(11) and (c)(12) to read as follows:

§ 238.305 Interior calendar day mechanical inspection of passenger cars.

* * * * *

(c) As part of the interior calendar day mechanical inspection, the railroad shall verify conformity with the following conditions, and nonconformity with any such condition renders the car defective whenever discovered in service, except as provided in paragraphs (c)(8) through (c)(12) and paragraph (d) of this section.

* * * * *

(10) All end doors and side doors operate safely and as intended. A noncomplying car may continue in passenger service pursuant to paragraph (d) of this section—

(i) If at least one operative and accessible door is available on each side of the car;

(ii) The train crew is provided written notification of the noncomplying condition; and

(iii) A notice is prominently displayed directly on the defective door indicating that the door is defective.

(11) [Reserved]

(12) On passenger cars so equipped, public address and intercom systems shall be operative and function as intended. A passenger car with an inoperative or nonfunctioning public address or intercom system may remain in passenger service until no later than the car's fourth interior calendar day mechanical inspection or next periodic mechanical inspection required under § 238.307, whichever occurs first, or for a passenger car used in long-distance intercity train service until the eighth interior calendar day mechanical inspection or next periodic mechanical inspection required under § 238.307, whichever occurs first, after the noncomplying condition is discovered, where it shall be repaired or removed from service; provided, the train crew is given written notification of the noncomplying condition, and all of the requirements contained in paragraph (d)(3) of this section are met.

* * * * *

■ 15. Section 238.307 is amended by revising paragraph (c) introductory text, paragraph (c)(5), and paragraph (d) to read as follows:

§ 238.307 Periodic mechanical inspection of passenger cars and unpowered vehicles used in passenger trains.

* * * * *

(c) The periodic mechanical inspection shall specifically include the following interior and exterior mechanical components, which shall be inspected not less frequently than every 184 days. At a minimum, this inspection shall determine that:

* * * * *

(5) With regard to the following emergency systems:

(i) Emergency lighting systems required under § 238.115 are in place and operational; and

(ii) [Reserved]

* * * * *

(d) At an interval not to exceed 368 days, the periodic mechanical inspection shall specifically include inspection of the following:

(1) Manual door releases, to determine that all manual door releases operate as intended;

(2) The hand or parking brake as well as its parts and connections, to determine that they are in proper condition and operate as intended. The date of the last inspection shall be either entered on Form FRA F 6180–49A, suitably stenciled or tagged on the equipment, or maintained electronically provided FRA has access to the record upon request; and

(3) Emergency roof access markings and instructions required under § 238.123(e), to determine that they are in place and, as applicable, conspicuous or legible, or both.

* * * * *

Subpart E—Specific Requirements for Tier II Passenger Equipment

§ 238.437 [Removed]

■ 16. Section 238.437 is removed and reserved.

■ 17. Section 238.441 is revised to read as follows:

§ 238.441 Emergency roof access.

(a) *Existing passenger cars and power cars.* Each passenger car and power car ordered prior to April 1, 2009 and placed in service for the first time prior to April 1, 2011, shall have a minimum of one roof hatch emergency access location with a minimum opening of 26 inches by 24 inches, or at least one structural weak point in the roof providing a minimum opening of the same dimensions, to provide access for properly equipped emergency response personnel. Each emergency roof access location shall be conspicuously marked, and legible and understandable operating instructions shall be posted at or near each such location.

(b) *New passenger cars.* Each passenger car ordered on or after April

1, 2009 or placed in service for the first time on or after April 1, 2011, shall comply with the emergency roof access requirements specified in § 238.123.

(c) *New power cars.* Each power car ordered on or after April 1, 2009, or placed in service for the first time on or after April 1, 2011, shall have a minimum of one emergency roof access location, with a minimum opening of 26 inches longitudinally by 24 inches laterally, and comply with the emergency roof access requirements specified in §§ 238.123(b), (d), and (e).

■ 18. Appendix A to part 238 is amended by adding entries under subpart B for new sections 238.114, 238.121, and 238.123, under subpart E by removing and reserving the entry for section 238.437 and revising the entry for section 238.441, and by revising footnote 1 and adding footnote 2 to read as follows:

Appendix A to Part 238—Schedule of Civil Penalties [1] [2]

Section		Violation	Willful violation
Subpart B—Safety Planning and General Requirements			
*	*	*	*
238.114	Rescue access windows	2,500	5,000
*	*	*	*
238.121	Emergency communication	2,500	5,000
238.123	Emergency roof access	2,500	5,000
*	*	*	*

Subpart E—Specific Requirements for Tier II Passenger Equipment

§ 238.437 [Reserved]

*	*	*	*
238.441	Emergency roof access	2,500	5,000
*	*	*	*

Issued in Washington, DC, on January 17, 2008.

Joseph H. Boardman,

Federal Railroad Administrator.

[FR Doc. 08–247 Filed 1–31–08; 8:45 am]

BILLING CODE 4910–00–P

[1] A penalty may be assessed against an individual only for a willful violation. Generally when two or more violations of these regulations are discovered with respect to a single unit of passenger equipment that is placed or continued in service by a railroad, the appropriate penalties set forth above are aggregated up to a maximum of $16,000 per day. However, failure to perform, with respect to a particular unit of passenger equipment, any of the inspections and tests required under subparts D and F of this part will be treated as a violation separate and distinct from, and in addition to, any substantive violative conditions found on that unit of passenger equipment. Moreover, the Administrator reserves the right to assess a penalty of up to $27,000 for any violation where circumstances warrant. *See* 49 CFR part 209, appendix A.

Failure to observe any condition for movement of defective equipment set forth in § 238.17 will deprive the railroad of the benefit of the movement-for-repair provision and make the railroad and any responsible individuals liable for penalty under the particular regulatory section(s) concerning the substantive defect(s) present on the unit of passenger equipment at the time of movement.

Failure to observe any condition for the movement of passenger equipment containing defective safety appliances, other than power brakes, set forth in § 238.17(e) will deprive the railroad of the movement-for-repair provision and make the railroad and any responsible individuals liable for penalty under the particular regulatory section(s) contained in part 231 of this chapter or § 238.429 concerning the substantive defective condition.

The penalties listed for failure to perform the exterior and interior mechanical inspections and tests required under § 238.303 and § 238.305 may be assessed for each unit of passenger equipment contained in a train that is not properly inspected. Whereas, the penalties listed for failure to perform the brake inspections and tests under § 238.313 through § 238.319 may be assessed for each train that is not properly inspected.

[2] The penalty schedule uses section numbers from 49 CFR part 238. If more than one item is listed as a type of violation of a given section, each item is also designated by a ''penalty code,'' which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

Federal Register

Friday,
February 1, 2008

Part IV

The President

Executive Order 13457—Protecting American Taxpayers From Government Spending on Wasteful Earmarks

Federal Register
Vol. 73, No. 22
Friday, February 1, 2008

Presidential Documents

Title 3—

The President

Executive Order 13457 of January 29, 2008

Protecting American Taxpayers From Government Spending on Wasteful Earmarks

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Policy*. It is the policy of the Federal Government to be judicious in the expenditure of taxpayer dollars. To ensure the proper use of taxpayer funds that are appropriated for Government programs and purposes, it is necessary that the number and cost of earmarks be reduced, that their origin and purposes be transparent, and that they be included in the text of the bills voted upon by the Congress and presented to the President. For appropriations laws and other legislation enacted after the date of this order, executive agencies should not commit, obligate, or expend funds on the basis of earmarks included in any non-statutory source, including requests in reports of committees of the Congress or other congressional documents, or communications from or on behalf of Members of Congress, or any other non-statutory source, except when required by law or when an agency has itself determined a project, program, activity, grant, or other transaction to have merit under statutory criteria or other merit-based decisionmaking.

Sec. 2. *Duties of Agency Heads*. (a) With respect to all appropriations laws and other legislation enacted after the date of this order, the head of each agency shall take all necessary steps to ensure that:

(i) agency decisions to commit, obligate, or expend funds for any earmark are based on the text of laws, and in particular, are not based on language in any report of a committee of Congress, joint explanatory statement of a committee of conference of the Congress, statement of managers concerning a bill in the Congress, or any other non-statutory statement or indication of views of the Congress, or a House, committee, Member, officer, or staff thereof;

(ii) agency decisions to commit, obligate, or expend funds for any earmark are based on authorized, transparent, statutory criteria and merit-based decision making, in the manner set forth in section II of OMB Memorandum M–07–10, dated February 15, 2007, to the extent consistent with applicable law; and

(iii) no oral or written communications concerning earmarks shall supersede statutory criteria, competitive awards, or merit-based decisionmaking.

(b) An agency shall not consider the views of a House, committee, Member, officer, or staff of the Congress with respect to commitments, obligations, or expenditures to carry out any earmark unless such views are in writing, to facilitate consideration in accordance with section 2(a)(ii) above. All written communications from the Congress, or a House, committee, Member, officer, or staff thereof, recommending that funds be committed, obligated, or expended on any earmark shall be made publicly available on the Internet by the receiving agency, not later than 30 days after receipt of such communication, unless otherwise specifically directed by the head of the agency, without delegation, after consultation with the Director of the Office of Management and Budget, to preserve appropriate confidentiality between the executive and legislative branches.

(c) Heads of agencies shall otherwise implement within their respective agencies the policy set forth in section 1 of this order, consistent with such instructions as the Director of the Office of Management and Budget may prescribe.

(d) The head of each agency shall upon request provide to the Director of the Office of Management and Budget information about earmarks and compliance with this order.

Sec. 3. *Definitions.* For purposes of this order:

(a) The term ''agency'' means an executive agency as defined in section 105 of title 5, United States Code, and the United States Postal Service and the Postal Regulatory Commission, but shall exclude the Government Accountability Office; and

(b) the term ''earmark'' means funds provided by the Congress for projects, programs, or grants where the purported congressional direction (whether in statutory text, report language, or other communication) circumvents otherwise applicable merit-based or competitive allocation processes, or specifies the location or recipient, or otherwise curtails the ability of the executive branch to manage its statutory and constitutional responsibilities pertaining to the funds allocation process.

Sec. 4. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to an agency or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

(b) This order shall be implemented in a manner consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its agencies, instrumentalities, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,

January 29, 2008.

[FR Doc. 08–483

Filed 1–31–08; 9:02 am]

Billing code 3195–01–P

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CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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LIST OF PUBLIC LAWS

This is the first in 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*.

A cumulative List of Public Laws for the first session of the 110th Congress will appear in the issue of February 11, 2008.

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. 4986/P.L. 110–181

National Defense Authorization Act for Fiscal Year 2008 (Jan. 28, 2008; 122 Stat. 3)

Last List January 10, 2008

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TABLE OF EFFECTIVE DATES AND TIME PERIODS—FEBRUARY 2008

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
February 1	Feb 19	Mar 3	Mar 17	Apr 1	May 1
February 4	Feb 19	Mar 5	Mar 20	Apr 4	May 5
February 5	Feb 20	Mar 6	Mar 21	Apr 7	May 5
February 6	Feb 21	Mar 7	Mar 24	Apr 7	May 6
February 7	Feb 22	Mar 10	Mar 24	Apr 7	May 7
February 8	Feb 25	Mar 10	Mar 24	Apr 8	May 8
February 11	Feb 26	Mar 12	Mar 27	Apr 11	May 12
February 12	Feb 27	Mar 13	Mar 28	Apr 14	May 12
February 13	Feb 28	Mar 14	Mar 31	Apr 14	May 13
February 14	Feb 29	Mar 17	Mar 31	Apr 14	May 14
February 15	Mar 3	Mar 17	Mar 31	Apr 15	May 15
February 19	Mar 5	Mar 20	Apr 4	Apr 21	May 19
February 20	Mar 6	Mar 21	Apr 7	Apr 21	May 20
February 21	Mar 7	Mar 24	Apr 7	Apr 21	May 21
February 22	Mar 10	Mar 24	Apr 7	Apr 22	May 22
February 25	Mar 11	Mar 26	Apr 10	Apr 25	May 27
February 26	Mar 12	Mar 27	Apr 11	Apr 28	May 27
February 27	Mar 13	Mar 28	Apr 14	Apr 28	May 27
February 28	Mar 14	Mar 31	Apr 14	Apr 28	May 28
February 29	Mar 17	Mar 31	Apr 14	Apr 29	May 29